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April 20, 1993

Briefings on How To Use the Federal Register
For information on briefings in Independence, MO, and Washington, DC, see announcement on the inside cover of this issue.

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

INDEPENDENCE, MO

WHEN: April 27, at 9:30 am

WHERE: Harry S. Truman Library
U.S. Highway 24 and Delaware St.
Multipurpose Room
Independence, MO

RESERVATIONS: Federal Information Center
1–800–735–8004 or
1–800–366–2998 for the St. Louis area.

WASHINGTON, DC

WHEN: May 12 and June 15 at 9:00 am

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275--1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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Tuesday, April 20, 1993

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

General Crop Insurance Regulations; Corn Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date (Acceptance of Applications).

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of its determination to extend the sales closing date for the acceptance of certain applications for corn crop insurance for all counties with a March 31 or April 15 sales closing date. This notice of determination is effective for the 1993 crop year only. This action is necessary in order to allow producers who are required to carry crop insurance protection as a prerequisite for obtaining certain benefits under the provisions of the Food, Agriculture, Conservation, and Trade Act of 1990 and the Dire Emergency Supplemental Appropriation Act of Fiscal Year 1992 the opportunity to purchase such coverage. The intended effect of this notice is to advise all interested parties of FCIC's determination of the acceptance of these applications. This notice complies with the provisions of the General Crop Insurance Regulations outlining the Manager's authority to extend the date for accepting applications for crop insurance.

EFFECTIVE DATE: April 20, 1993.

FOR FURTHER INFORMATION CONTACT: Mari Dunleavy, Acting Director, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: Subject to certain limitations, the provisions of the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act), and Dire Emergency Supplemental Appropriation Act for Fiscal Year 1992, require that, in order to be eligible to receive certain benefits for a crop, a producer must agree to obtain multi-peril crop insurance for that crop under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*). Evidence of such insurance coverage must be furnished to the producer's county office of the Agricultural Stabilization and Conservation Service (ASCS). As a condition of eligibility for disaster benefits, producers must purchase multi-peril crop insurance for the 1993 crop year if 1992 deficiency in actual production exceeds 65 percent of expected production.

Under its regulations for insuring crops, FCIC requires that applications for crop insurance must be filed on or before the sales closing date. The Corn Endorsement (§ 401.111) has sales closing dates established on a geographic basis of March 31 and April 15. ASCS recently advised that the sign-up period for disaster payments under the 1990 Act would be open through May 7, 1993. Accordingly, the sales closing date for corn insurance in those counties having a March 31 or April 15 sales closing date shall be extended to May 7, 1993 for those producers required to purchase multiple peril crop insurance as a condition of eligibility for disaster payments. FCIC has determined that no adverse selection will result from extending the sales closing date to May 7.

Under the provisions of the General Crop Insurance Regulations (§ 401.8), the sales closing date for accepting applications may be extended by notice in the **Federal Register** upon determination that no adverse selection will result from such extension.

Accordingly, pursuant to the authority contained in (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation herewith gives notice that applications for corn crop insurance will be accepted up to the close of business on May 7, 1993, effective only for the 1993 crop year, and only for those producers who must purchase multiple peril crop insurance as a condition of eligibility for disaster assistance under the 1990 Act.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC, on April 13, 1993.

Kathleen Connelly,
Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 93–9116 Filed 4–19–93; 8:45 am]

BILLING CODE 3410–08–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

FOIA Fee Schedule

AGENCY: Update of FOIA Fee Schedule.

SUMMARY: The Defense Nuclear Facilities Safety Board is publishing its annual update to the Freedom of Information Act (FOIA) Fee Schedule pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations.

EFFECTIVE DATE: May 1, 1993.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., suite 700, Washington, DC 20004, (202) 208–6447.

SUPPLEMENTARY INFORMATION: The FOIA requires each Federal agency covered by the Act to specify a schedule of fees applicable to processing of requests for agency records. 5 U.S.C. 552(a)(4)(i). On March 15, 1991 the Board published for comment in the **Federal Register** its proposed FOIA Fee Schedule. 56 FR 11114. No comments were received in response to that notice and the Board issued a final Fee Schedule on May 6, 1991.

Pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations, the Board's General Manager will update the FOIA Fee Schedule once every 12 months. The previous Fee Schedule update was published in the **Federal Register** and went into effect on May 19, 1992. 57 FR 21235.

Board Action

Accordingly, the Board issues the following schedule of updated fees for services performed in response to FOIA requests:

Defense Nuclear Facilities Safety Board Schedule of Fees for FOIA Services

(Implementing 10 CFR 1703.107(b)(6)

Search or Review Charge.	$38.21 per hour.

Copy Charge (paper) (8.5" × 11").	$.07 per page or generally available commercial rate.
Copy Charge (3.5" diskette).	$5.00 per diskette.
Copy Charge (audio cassettes).	$3.00 per cassette.
Duplication of Video	$25.00 per video; $16.50 for each additional video.
Copy Charge for large documents (e.g., maps, diagrams).	Actual commercial rates.

Dated: April 15, 1993.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 93-9209 Filed 4-19-93; 8:45 am]

BILLING CODE 6820-KD-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-36-AD; Amendment 39-8544; AD 93-07-12]

Airworthiness Directives; Fairchild Aircraft (Formerly Swearingen Aircraft Corporation) SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 74-24-02, which currently requires repetitively inspecting the horizontal stabilizer rear spar at the outboard elevator hinge bracket for cracks on certain Fairchild Aircraft SA226 airplanes, and repairing any cracks found. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive inspections when improved parts are available. This final rule action requires modifying the outboard elevator hinge as terminating action for the repetitive inspections currently required. It also increases the applicability to include certain Fairchild Aircraft SA227 series airplanes of the same type design that are currently not affected by the existing AD. The actions specified by this AD are intended to prevent failure of the horizontal stabilizer rear spar, which could result in loss of control of the airplane.

DATES: Effective May 28, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 28, 1993.

ADDRESSES: Service information that applies to this AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279-0490; Telephone (512) 824-9421. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Hung Viet Nguyen, Aerospace Engineer, Airplane Certification Office, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76193-0150; Telephone (817) 624-5155.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that applies to certain Fairchild SA226 and SA227 series airplanes was published in the **Federal Register** on December 9, 1992 (57 FR 58162). The action proposed to supersede AD 74-24-02 with a new AD that would (1) initially retain the requirement of repetitively inspecting the horizontal stabilizer rear spar at the outboard elevator hinge bracket for cracks, and repairing any cracks; and (2) eventually require modifying the outboard elevator hinge as terminating action for the repetitive inspections currently required by AD 74-24-02. The proposed actions would be accomplished in accordance with Fairchild Aircraft SB 226-55-005, Issued: August 15, 1985, Revised: January 7, 1991; or Fairchild Aircraft SB 227-55-002, Issued: August 15, 1985, Revised: October 13, 1988, as applicable.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter agrees with the proposed AD. The other comments are from the manufacturer, and are explained in the next two paragraphs.

Fairchild Aircraft states that the applicability of the proposed AD is incorrect in that it references all serial number airplanes. In actuality, Fairchild Aircraft incorporated the proposed modification on certain SA227 series airplanes beginning at certain serial numbers for each model. The FAA concurs that the proposed AD should only apply to certain SA227 series airplanes and has changed the applicability to reflect this serial number limitation.

In addition, Fairchild Aircraft requests that the FAA change paragraph (b) of the proposed AD to grant Fairchild Aircraft's Designated Engineering Representative (DER) authority to approve repair schemes instead of going through the Manager, Fort Worth Airplane Certification Office. The FAA does not concur because DERs are not authorized to approve AD-related service bulletins or AD-related repair procedures. The proposed AD remains unchanged as a result of this comment.

No comments were received on the FAA's determination of the cost to the public.

After careful review of all available information including the comments referenced above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the reduction in the serial number effectivity and minor editorial corrections. The FAA has determined that these minor changes and corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 443 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 30 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $220 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $828,410. This figure is $420,750 less than that originally proposed in the NPRM, and is the result of eliminating from the applicability 225 Fairchild Aircraft SA227 series airplanes that have the required modification incorporated at production.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 443 airplanes in the U.S. registry that will be affected by the required AD, the FAA has determined that approximately 30 percent are operated in scheduled passenger service by 19 different operators. A significant number of the remaining 70 percent are operated in other forms of air transportation such as air cargo and air taxi.

The required AD allows 2,000 hours time-in-service (TIS) before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation will have to accomplish the required modification within 5 to 10 calendar months after the required AD becomes effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this will allow 10 to 20 calendar years before mandatory compliance with the required modification.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 74-24-02, Amendment 39-2529, and adding the following new AD:

93-07-12 Fairchild Aircraft (formerly Swearingen Aircraft Corporation): Amendment 39-8544; Docket No. 91-CE-36-AD. Supersedes AD 74-24-02, Amendment 39-2529.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial No.
SA226-T, SA226-T(B), SA226-AT, and SA226-TC.	All serial numbers.
SA227-TT	TT421 through TT527.
SA227-AC	AC406, AC415, AC416, AC420 through AC509, and AC511 through AC530.
SA227-AT	AT423 through AT524.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent failure of the horizontal stabilizer rear spar, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS), unless already accomplished within the last 450 hours TIS, and thereafter at intervals not to exceed 500 hours TIS until the modification required by paragraph (b) of this AD is accomplished, dye penetrant inspect the horizontal stabilizer rear spar at the left and right outboard elevator hinge bracket attachment for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Aircraft Service Bulletin (SB) 226-55-005, Issued: August 15, 1985, Revised: January 7, 1991; or Fairchild Aircraft SB 227-55-002, Issued: August 15, 1985, Revised: October 13, 1988, as applicable.

(b) If cracks are found in the horizontal stabilizer rear spar, prior to further flight, repair any crack in accordance with a repair scheme obtained from the manufacturer through the Manager, Fort Worth Airplane Certification Office, at the address specified in paragraph (f) of this AD.

(c) Within the next 2,200 hours TIS, modify the outboard hinge in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Aircraft SB 226-55-005, Issued: August 15, 1985, Revised: January 7, 1991; or Fairchild Aircraft SB 227-55-002, Issued: August 15, 1985, Revised: October 13, 1988, as applicable.

(d) The accomplishment of the modification required by paragraph (c) of this AD is considered terminating action for the repetitive inspection requirement of this AD. This modification may be accomplished at any time prior to 2,200 hours TIS.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office, FAA, Fort Worth, Texas 76193-0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth Airplane Certification Office.

(g) The inspections and modification required by this AD shall be done in accordance with Fairchild Aircraft Service Bulletin 226-55-005, Issued: August 15, 1985, Revised: January 7, 1991; or Fairchild Aircraft Service Bulletin 227-55-002, Issued: August 15, 1985, Revised: October 13, 1988, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279-0490. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39-8544) supersedes AD 74-24-02, Amendment 39-2529.

(i) This amendment (39-8544) becomes effective on May 28, 1993.

Issued in Kansas City, Missouri, on April 12, 1993.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-9150 Filed 4-19-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 92-NM-67-AD; Amendment 39-8547; AD 93-07-15]

Airworthiness Directives; Boeing Models 707, 727, 737, 747, and 757 Series Airplanes; and McDonnell Douglas Models DC-8, DC-9, and DC-10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Boeing and McDonnell Douglas airplanes, that currently requires certain operational and equipment changes and design modifications to be accomplished to maximize fire detection and protection

in main deck cargo compartments. The existing rule was issued based on the FAA's determination that the existing Class B cargo compartment firefighting procedures and fire protection features were inadequate, and could result in the loss of an airplane. This amendment requires certain design modifications and operational requirements to ensure an adequate level of safety on airplanes with Class B cargo compartments. This amendment is prompted by comments from the public and additional information received after issuance of the existing AD.

EFFECTIVE DATE: May 2, 1993.

ADDRESSES: Information pertaining to this AD may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3229 E. Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: For information concerning Boeing airplanes, contact Ms. Susan Letcher, Aerospace Engineer, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2670, fax (206) 227–1181. For information concerning McDonnell Douglas airplanes, contact Mr. Kevin Kuniyoshi, Aerospace Engineer, Los Angeles Aircraft Certification Office, Mechanical/Environmental and Crashworthiness Section, ANM–131L, FAA, Transport Airplane Directorate, 3229 E. Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5337; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91–10–02, Amendment 39–6986 (56 FR 20529, May 6, 1991), which is applicable to various Boeing and McDonnell Douglas airplanes, was published in the **Federal Register** on August 17, 1992 (57 FR 36918). The action proposed to require certain design modifications and operational requirements to ensure an adequate level of safety on airplanes with Class B cargo compartments.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Response to Commenters

One commenter supports the proposal, especially the decision to delete the previous requirement for use of a firefighter. This commenter considers that, although conversion to the Class C cargo compartment configuration will provide the greatest level of safety, the options proposed by the FAA in this rulemaking action provide a more acceptable and practical choice for the affected industry.

Several commenters are concerned about the worldwide impact of the proposed rule. These commenters recommend that the FAA coordinate the proposal with the Joint Aviation Authorities (JAA) and Transport Canada Aviation. The FAA notes that it has worked, and will continue to work, very closely with these organizations in the development of rulemaking concerning combi-configured ("Combi") airplanes and their operations.

Two commenters recommend that a separate AD be issued that would apply only to narrow-body airplanes. A separate AD could take into account all of the differences between narrow-body and wide-body operations, and specify only those requirements that specifically pertain to narrow-body airplane configurations and operations. Such an action also would make for an AD that would be considerably easier to read. The FAA disagrees. The threat of an uncontrolled fire is equivalent for both narrow-body and wide-body airplanes. The FAA recognizes that the solutions may differ based on size of the airplane and airline route structure; however, it is impractical to address each operator's unique circumstance in this AD or through a collection of AD's, due to the varied airplane types and route structures.

The options offered in this rule apply equally to both narrow-body and wide-body airplanes. Operators who need to tailor certain of the requirements for various operations may apply for alternative methods of compliance with the rule, under the provisions of paragraph (d).

One commenter requests that the rule be revised to require specifically that safety equipment be located in the passenger cabin, outside of the cargo compartment. The FAA agrees with the commenter's suggestion that certain equipment be located outside of the cargo compartment, but does not consider that a revision to the rule is necessary. Paragraph (b) of the rule does require that protective garments and protective breathing equipment (PBE) be located outside of the cargo compartment; additionally, paragraph (a) of the rule requires that portable fire extinguishers be located such that they are readily available for use in the cargo compartment. In fact, the FAA previously has required that, for compliance with AD 89–18–12 R1 [Amendment 39–6557 (55 FR 11163, March 27, 1990)], a portion of the extinguishers must be located outside of the cargo compartment for ready access. The FAA will continue to require that a number of the extinguishers be located in the passenger compartment, unless adequate data can be submitted to support a different location.

Several commenters note, and agree with, the FAA's previous acceptance of certain existing smoke detection systems in meeting the intent of the "one-minute detection" requirement of the rule. (The intent of this requirement was explained in detail in the preamble to the notice.) The FAA points out, however, that operators should be aware that acceptance of these systems for the purposes of this rule does not necessarily constitute compliance with FAR 25.858 ("Cargo compartment fire detection systems").

Two commenters question the differences in wording appearing in the proposed rule concerning the personnel required to perform the preflight inspection. These commenters point out that paragraph (a)(1) would require that a "flight deck crewmember" perform the inspection, whereas paragraphs (b)(3)(ix) and (b)(4)(xi) would require that a "crewmember" perform the inspection. Because of these differences, operators would be required to make two different revisions to the Airplane Fight Manual (AFM). One of the commenters requests that paragraph (a)(1) be modified to allow a "crewmember," rather than a "flight deck crewmember," to perform the preflight inspection. The FAA does not concur that a change in the wording of the rule is warranted. At this point, the requirement of paragraph (a)(1) should have been implemented on existing airplanes by May 3, 1991, in accordance with the existing rule, AD 91–10–02. Although compliance with paragraph (b) is not required for several years after the effective date of this final rule, operators have the option to comply directly with individual portions of paragraph (b) prior to the compliance date. Operators should recognize that compliance with the paragraph (b)(3)(ix) or (b)(4)(xi) requirement supersedes the paragraph (a)(1) requirement. In addition, the paragraph (b) requirement is considered "relieving," as it allows any crewmember to perform the preflight inspection, whereas paragraph

(a) allows only a flight deck crewmember to perform the inspection.

Another commenter states that the preflight inspection requirements of proposed paragraphs (a)(1), (b)(3)(ix), and (b)(4)(xi) would be more appropriately placed in the Normal Procedures section (Section 3) of the AFM, rather than in the Limitations section. This commenter considers that it is inappropriate to put this information in the Limitations section because it does not meet the intent of FAR 25.1583 ("Operating limitations"). The commenter states that these requirements of the rule also restrict the operators in the development of their operations manuals. The FAA does not concur. The preflight inspection is appropriate in the Limitations section of the AFM because it is a flight crew duty, in accordance with FAR 25.1583(d). Although paragraphs (b)(3)(ix) and (b)(4)(xi) allow any crewmember to perform the inspection, the pilot remains the individual responsible for safe operation of the airplane in accordance with FAR 91.3 ("Responsibility and authority of the pilot in command") and, therefore, is responsible for ensuring that the preflight inspection is properly conducted. Specific reminders to this effect are included in the final rule as Notes 1, 2, and 3.

Another commenter requests that proposed paragraphs (a)(1), (b)(3)(ix), and (b)(4)(xi) be revised to allow insertion of a copy of the AD into the AFM as an option to revising the AFM to reflect the preflight inspection requirement. The FAA does not concur. Compliance with paragraph (b) of the rule requires additional modifications to the flight manual, depending upon the option selected. The necessary revisions to the flight manual to accommodate the new equipment and procedures could not be adequately communicated by inserting a copy of the AD in the AFM.

One commenter requests that proposed paragraph (a)(2)(iv) be revised to delete the requirement for two-sided access to loaded pallets or containers. Another commenter requests that the placard that would be required by the same paragraph be revised to consider "the top and one side" of a loaded pallet/container as equivalent to "two-sided access" for airplanes such as the Boeing Model 727 and Model 737. The FAA does not concur with the request to delete the requirement. The FAA considers two-sided access to be an important requirement to ensure that adequate access is available for the remote instance when manual firefighting is required. The FAA does consider that the top and one side of a loaded pallet/container could be acceptable as two-sided access in certain cases, based on size of the airplane, nature of the airline operation, and incorporated fire protection features; however, the FAA does not concur that such a provision should apply universally to all airplanes. Insertion of such a provision in the rule is impractical. In the past, the FAA has allowed the top and one side of palleted cargo and containers to be considered two-sided access as an alternative method of compliance with AD 89–18–12 R1. The FAA will continue to recognize that acceptable alternative methods of compliance that allow such a provision could be acceptable on a case-by-case basis; operators may apply for the use of such methods under the provisions of paragraph (d) of the final rule.

Several commenters request that the proposed 30-month compliance period for the requirements of paragraph (b) be extended. The commenters indicate that modification kits for the Boeing Model 747–100, 747–200 and 747–300 series airplanes will not be available from the manufacturer until August 1993, at which time the kits will be produced at a rate of only three per month. Likewise, modification kits for the Boeing Model 747–400 series airplanes will not be available until August 1994. In light of this schedule, the commenters request that the compliance period be extended to allow 5 years after kit availability for airlines to schedule modification of their airplanes; this would amount to a 3- to 4-year extension beyond the proposed 30-month compliance period. One commenter also requests more flexibility in the schedule for modification implementation on Boeing Model 747–400 series airplanes because of related improvements that have already been implemented on these airplanes. Upon review of this new data provided by the commenters, the FAA concurs that additional time can be provided for compliance. The proposed 30-month compliance period was based on initial estimates of the time required to design, produce, and install modifications on Boeing Model 747 series Combi airplanes, for which the required modifications were considered to be the most extensive. Based on the production schedule for the modification kit for these as well as other airplanes, the FAA now considers that the proposed 30-month compliance period is insufficient. The FAA does not concur, however, with the request for the extensive delays suggested by the commenters. The FAA has determined that an additional 12 months will provide sufficient time for compliance without adversely affecting safety. The final rule has been revised to reflect this.

Several commenters state that the option of covering all cargo, in accordance with proposed paragraph (b)(3), is not practical. One commenter states that certain noncombustible items, such as animals, vehicles, and steel for oil rigs, are not fire hazards and should not be required to be covered. One commenter suggests that the rule require that only material meeting certain hazardous material criteria be required to be covered. The FAA concurs that some noncombustible cargo may not need to be covered, provided that it is not packed in or covered with combustible packing materials. However, these situations must be considered on a case-by-case basis. Under the provisions of paragraph (d) of the final rule, operators can request to use an alternative method of compliance with paragraph (b)(3) when certain cargo types are carried.

One commenter states that the types of covers that would be required by proposed paragraph (b)(3)(i)(A) are hard to find. This commenter requests that the rule be delayed until an adequate number of covers are developed and manufactured. The FAA does not concur that delay of the rule is warranted. The FAA recognizes that FAA-approved cargo covers are not readily available at this time. However, the compliance time for the relevant portion of the final rule provides adequate time to develop and manufacture covers or containers that comply with this requirement.

One commenter recommends that aural and visual warnings that would be required by proposed paragraph (b)(3) be limited to the flight deck in order to prevent unnecessary alarm to the passengers, particularly in the case of false alarms. The FAA disagrees. Although the FAA acknowledges that warning signals may alarm passengers, the FAA considers that the warning signal in the passenger compartment is necessary in order to alert the flight attendants so that procedures for responding to alarms can be initiated.

Several commenters disagree with the quantities of PBE that would be required by proposed paragraphs (b)(3)(viii)(B) and (b)(4)(x)(B). Several commenters submitted data that would support specific reductions in the PBE requirement. The FAA agrees that, in certain cases, this quantity could be reduced without adversely impacting safety. The quantity of PBE as proposed was based on a 120-minute diversion scenario; the proposed amount was considered to be warranted in order to allow sufficient PBE for one person to monitor the fire continuously throughout the diversion, and an additional 30 minutes of PBE for a second person. The FAA does not consider that it is necessary to revise the specific requirements in paragraphs (b)(3)(viii)(B) and (b)(4)(x)(B), however. The FAA may consider accepting requests for the use of reduced quantities of PBE in certain operations, based on the fire protection features provided and maximum diversion times expected. Under the provisions of paragraph (d) of the final rule, operators may request such reductions through applications for alternative methods of compliance.

Several commenters request the rule be revised to reduce the required quantity of halon extinguishant, water extinguishers, and protective garments. In particular, one commenter recommends that proposed paragraph (b)(3) of the rule specifically not require water extinguishers. This commenter notes that it would be unrealistic to require water to be applied directly to the burning material, especially since the cargo would be under a cover or in a container. The commenter further notes that water runoff could also damage the electrical systems in the cargo compartment. The FAA concurs that the number of halon and water extinguishers could be reduced on a case-by-case basis, depending on the method of compliance selected and individual airline operational considerations. Operators who can adequately justify such reductions may request such relief through alternative methods of compliance, in accordance with paragraph (d) of the rule. The FAA does not concur, however, with a reduction in the requirement for two sets of protective garments. The FAA considers that this number of protective garments is essential in the event that manual intervention becomes necessary and a second person is required to assist in firefighting duties.

One commenter requests that the rule be revised to provide relief from some of the requirements of paragraph (b)(3), including the illumination, smoke barrier, crew training, and flight test requirements. The FAA cannot concur since this commenter provided no data to substantiate the request. Under the provisions of paragraph (d) of the final rule, any operator who requires "relief" of any type from the requirements of this rule has the opportunity to apply for the use of an alternative method, provided that adequate supporting data to justify such a request is submitted with the application.

One commenter points out that proposed paragraph (b)(3)(iv)(B) should be corrected to read ".05 foot candle," rather than "5 foot candles." The FAA concurs. The same error occurred in paragraph (b)(4)(vi)(B). The final rule has been corrected to reflect this.

Two commenters request clarification of proposed paragraph (b)(4)(v), which would require operators to demonstrate that critical systems in the cargo compartment are adequately protected from fire. These commenters point out that, in the preamble to the notice, the FAA stated that it had originally intended to allow crewmembers first to confirm the presence of fire on alarm by looking into, and possibly entering, the cargo compartment prior to release of the halon. (This procedure was considered primarily in recognition of the fact that the likelihood of a false alarm is considerably higher than that of a real fire.) Because this act of "manually" confirming the fire would delay release of the halon, the proposed rule would require that operators demonstrate that critical systems in the cargo compartment would not be compromised in that period of time prior to halon release and effectiveness. However, the FAA also indicated that automatic release of halon on alarm, without manual confirmation, might be required to compensate for this if adequate protection could not be demonstrated. Regardless of the procedure for halon release (automatic discharge or confirmation), adequate protection of critical systems in the cargo compartment must be validated.

In view of this, one commenter requests that the automatic release of halon procedure not be permitted, since false alarms often occur when carrying cargo such as animals, vegetables, and flowers. In response to this commenter's concern, the FAA recognizes that the likelihood of a false alarm is much greater than that of a real fire. The FAA considers that automatic halon release would be required only if adequate protection could not be demonstrated to ensure timely release of halon before damage to critical systems occurs. If adequate protection of these systems is demonstrated, automatic release would not be required.

Along this same line, another commenter questions whether the FAA would consider an acceptable "automatic" halon release procedure to be "the release of halon immediately by crew procedure upon smoke detection indication and confirmation." The FAA responds to this commenter by indicating that it currently does not consider manual release of halon on alarm to constitute "automatic" release. However, if adequate supporting data were submitted to the FAA to demonstrate that manual release of halon by crew procedure would not cause a delay in halon discharge and would not result in damage to critical systems, the FAA would be willing to consider it as an alternative method of compliance with the relative portion of the rule. Operators interested in using such an alternative method should review the provisions of paragraph (d) of the final rule.

One commenter requests that the rule be revised to provide an additional option that would allow the halon protection system to be reduced to 60 minutes, provided that the maximum diversion was always within 90 minutes. Proposed paragraph (b)(4) offers operators an option to install only a 90-minute halon protection system. The FAA does not concur. The 90-minute halon system, along with the associated required design and operational changes, was intended to provide protection for diversions up to 120 minutes. In developing the rule, the FAA surveyed Combi operators worldwide; based on data received from this survey, the FAA determined that only 10% of Combi flight time would be beyond 90 minutes of a suitable landing in the event of a fire. Therefore, a 90-minute halon system would provide full halon coverage through the diversion in most cases. Conversely, almost 30% of Combi flight time would be beyond 60 minutes of a suitable landing, leading to a much higher probability that diversions will not have full halon coverage. The commenter submitted no specific operational data to support the reduction in halon proposed. However, under the provisions of paragraph (d) of the final rule, operators may request the use of an alternative method of compliance with the rule, provided that data submitted adequately supports the request.

Several other commenters recommend that an additional option be provided in the rule to allow for the installation of a 60-minute halon system, provided that the crew is trained in accordance with the firefighter requirements specified by the Joint Aviation Authorities (JAA). The FAA does not concur. As previously stated, a survey of current Combi operations has shown that almost 30% of Combi flight time would be more than 60 minutes from a suitable landing. The FAA has previously determined that manual firefighting is ineffective and should only be attempted as a last resort; therefore, additional training to fight fires would not sufficiently offset the reduced safety of a 60-minute halon system.

One commenter requests that the rule be revised to delete the special illumination criteria specified in proposed paragraph (b)(4)(vi). The FAA disagrees. A certain level of lighting is required for confirming the presence of a fire in the cargo compartment, and for monitoring the compartment after an alarm. Some existing lighting systems may be adequate to meet the intent of the requirement. Operators interested in using existing lighting may request approval of the use of an alternative method of compliance with the rule, in accordance with paragraph (d) of the final rule.

One commenter requested relief from the illumination requirement of proposed paragraph (b)(3)(iv) for narrow-body airplanes. Because of the configuration of the cargo compartment on narrow-body airplanes, the only pathway in the compartment is fore and aft along the left sidewall of the compartment; in all configurations, this pathway is "defined" by the cargo and containers. The commenter states that, even with reduced visibility, a crewmember monitoring the compartment could easily navigate by touch. Further, additional illumination is provided during daylight hours from windows with raised shades. The FAA does not concur with the commenter's request. The FAA has determined that a certain level of lighting is required for adequately monitoring the cargo compartment. The FAA does acknowledge, however, that some existing lighting on certain airplane configurations may be acceptable to meet the intent of the rule. Operators who consider that the current configuration of their airplanes meet this intent, may supply substantiating data to the FAA through the alternative method of compliance provisions of paragraph (d) of the final rule.

One commenter points out that paragraph (b)(4)(ii) should reference Amendment "25–54," rather than Amendment "25–4." The FAA acknowledges this publication error. The final rule has been revised to reflect the correct amendment number.

In addition, another publication error was identified in paragraph (b)(4)(x)(B). The Technical Standard Order (TSO) referenced in that paragraph should be TSO "C–116," rather than "C–16." The final rule has been corrected to reflect this.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 278 Boeing Models 707, 727, 737, 747, and 757 series airplanes and 124 McDonnell Douglas Model DC–8, DC–9, and DC–10 series airplanes of the affected design in the worldwide fleet. It is estimated that approximately 80 Boeing Model 707, 727, 737, 747, and 757 series airplanes, and 79 McDonnell Douglas Model DC–8, DC–9, and DC–10 series airplanes, of U.S. registry have been certificated to operate with a Class B main deck cargo compartment. Many of these airplanes are operated permanently in the all-passenger configuration and, therefore, are not affected by this rule. Approximately 40 of these airplanes are currently operated by U.S. operators in the mixed cargo/passenger configuration and are affected by this amendment.

The design alternative selected by the operator and the type of airplane will have a significant impact on the cost of complying with this AD. The highest cost option is expected to be the conversion to a Class C compartment, as defined in paragraph (b)(1) of this proposal. A conservative cost estimate for incorporating the extended halon option into Boeing Model 747 airplanes, based upon costs of required materials, labor, and testing, is $2,000,000 per airplane. A conservative estimate for incorporating the blanket/container option on Boeing Model 747 airplanes, based upon the costs of required materials, labor, and testing, is $200,000.

The FAA is not aware of any U.S. Model 747 Combi operators. Most U.S.-registered Combis are Boeing Models 727 and 737 airplanes operated in Alaska. The FAA previously has granted these operators alternative methods of compliance with AD 89–18–12 R1. These alternative methods of compliance are acceptable to meet the intent of this amendment as well. Therefore, this AD should incur no additional cost on U.S operators.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6986 (56 FR 20529, May 6, 1991) and by adding a new airworthiness directive (AD), amendment 39–8547, to read as follows:

93–07–15 Boeing and McDonnell Douglas: Amendment 39–8547, Docket No. 92–NM–67–AD. Supersedes AD 91–10–02, Amendment 39–6986.

Applicability: Boeing Models 707, 727, 737, 747, and 757 series airplanes and McDonnell Douglas Models DC–8, DC–9, and DC–10 series airplanes; equipped with a main deck Class B cargo compartment, as defined by Federal Aviation Regulations (FAR) 25.857(b) or its predecessors, with a volume exceeding 200 cubic feet; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To minimize the hazard associated with a main deck Class B cargo compartment fire, accomplish the following:

(a) Within one year after May 3, 1990 (the effective date of Amendment 39–6557, AD 89–18–12 R1), or prior to carrying cargo in a Class B cargo compartment, whichever occurs later, accomplish the following in accordance with the appropriate technical data approved by the Manager, Seattle Aircraft Certification Office (for affected Boeing series airplanes), FAA, Transport Airplane Directorate; or the Manager, Los

Angeles Aircraft Certification Office (for affected McDonnell Douglas series airplanes), FAA, Transport Airplane Directorate:

(1) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following:

FOR EACH FLIGHT IN WHICH CARGO IS TRANSPORTED IN THE CLASS B CARGO COMPARTMENT:

Prior to flight, a flight deck crewmember must make a visual inspection throughout the Class B cargo compartment to verify access to cargo and the general fire security of the compartment after the cargo door is closed and secured.

Note 1: This visual inspection is in no manner intended to relieve the pilot of his/her responsibility to ensure safe operation of the airplane, as required by FAR 91.3.

(2) Incorporate the following systems and equipment:

(i) Provide a minimum of 48 lbs. Halon 1211 fire extinguishant, or its equivalent, in portable fire extinguisher bottles readily available for use in the cargo compartment. At least two bottles must be a minimum of 16 lb. capacity.

(ii) Provide at least two Underwriters Laboratories (UL)2A (2½ gallon) rated water portable fire extinguishers, or its equivalent, adjacent to the cargo compartment entrance for use in the compartment.

(iii) Provide a means for two-way communication between the flight deck and the interior of the cargo compartment.

(iv) Install placards in conspicuous place(s) within the cargo compartment clearly defining the cargo loading envelope and limitations that provide sufficient access of sufficient width for firefighting along the entire length of at least two sides of a loaded pallet or container. Amend the appropriate Weight and Balance and loading instructions by description and diagrams to include this information.

(3) Incorporate the following systems and equipment:

(i) Provide appropriate protective garments stored adjacent to the cargo compartment entrance.

(ii) Provide a minimum of 30 minutes of protective breathing. This equipment must meet the requirements of Technical Standard Order (TSO) C-116, Action Notice 8150.2A, or equivalent, and be stored adjacent to the cargo compartment entrance.

(b) Within 42 months after the effective date of this AD, or prior to carrying cargo in a Class B cargo compartment, whichever occurs later, accomplish the requirements of either paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD:

(1) *Option 1:* Modify the Class B cargo compartment to comply with the requirements for a Class C cargo compartment, as defined in FAR 25.855 (Amdt. 25-60), 25.857(c), and 25.858 (Amdt. 25-54).

(2) *Option 2:* Modify all main deck Class B cargo compartments to require the following placard installed in conspicuous locations approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate (for affected Boeing series airplanes), or the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate (for affected McDonnell Douglas series airplanes), throughout the compartment:

Cargo carried in this compartment must be loaded in an approved flame penetration-resistant container meeting the requirements of FAR 25.857(c) with ceiling and sidewall liners and floor panels that meet the requirements of FAR 25, Appendix F, Part III, (Amdt. 25-60).

(3) *Option 3:* In addition to the requirements of paragraph (a)(2) of this AD, accomplish the following in accordance with technical data approved by the Manager, Seattle Aircraft Certification Office (for affected Boeing series airplanes), or the Manager, Los Angeles Aircraft Certification Office (for affected McDonnell Douglas series airplanes):

(i) Carriage of all cargo in Class B cargo compartments must meet the requirements of either paragraph (b)(3)(i)(A) or (b)(3)(i)(B) of this AD:

(A) Cover cargo with fire containment covers.

(B) Carry cargo in fire containment containers.

(ii) Provide a smoke or fire detection system in the Class B cargo compartment that meets the requirements of FAR 25.858 (Amdt. 25-54) and also provides an aural and visual warning to the crewmembers in the passenger compartment.

(iii) Provide a barrier between the Class B cargo compartment and the passenger compartment to prevent the penetration of smoke or flames from the cargo compartment into the passenger compartment. The barrier must extend from the cargo compartment floor to the upper crown area of the fuselage, and from the right sidewall to the left sidewall of the cargo compartment, completely isolating the cargo compartment from the passenger compartment. The barrier and associated seals/interfaces must meet the requirements of FAR 25, Appendix F, Part III (Amdt. 25-60).

(iv) Provide illumination of the Class B cargo compartment as specified in paragraphs (b)(3)(iv)(A) and (b)(3)(iv)(B) of this AD:

(A) General area illumination of the cargo with an average illumination of 0.1 foot-candle measured at 40-inch intervals both at one-half the pallet or container height, and at the full pallet or container height, or as approved by the FAA.

(B) Illumination of the longitudinal access pathways, required by paragraph (a)(2)(iv) of this AD, with an average illumination of .05 foot-candle when measured at 40-inch intervals along a line that is within 2 inches of and parallel to the floor centered on the pathway, or illumination under visibility conditions likely to occur in the cargo compartment in the event of a fire.

(v) Establish FAA-approved procedures and training as specified in paragraphs (b)(3)(v)(A) and (b)(3)(v)(B) of this AD:

(A) Use and maintenance of items required by paragraph (b)(3)(i).

(B) Responding to alarms, and monitoring and controlling Class B cargo compartment fires.

(vi) Provide a viewport into the Class B cargo compartment from the passenger compartment. The viewport must be located such that a crewmember can readily identify the overall smoke conditions in the compartment prior to entering it.

(vii) Demonstrate the following features and functions, specified in paragraphs (b)(3)(vii)(A), (b)(3)(vii)(B), and (b)(3)(vii)(C) of this AD:

(A) Smoke or Fire Detection System, required by paragraph (b)(3)(ii) of this AD, by flight test.

(B) Prevention of smoke penetration into occupied compartments [refer to FAR 25.857(b)(2) and 25.855(e)(2)], by flight test.

(C) Cargo accessibility, as specified in paragraph (a)(2)(iv) of this AD.

(viii) Provide the following systems and equipment:

(A) Provide appropriate protective garments for two persons stored in the passenger compartment, adjacent to the Class B cargo compartment entrance.

(B) Provide a minimum of 120 minutes of protective breathing for one person, and an additional 30 minutes of protective breathing for an additional person. This equipment must meet the requirements of Technical Standard Order (TSO) C-116, Action Notice 8150.2A, or equivalent, and at least 30 minutes of the total protective breathing must be stored adjacent to the Class B cargo compartment entrance. All protective breathing equipment must be located outside the cargo compartment.

(ix) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following:

FOR EACH FLIGHT IN WHICH CARGO IS TRANSPORTED IN THE CLASS B CARGO COMPARTMENT:

Prior to flight, a crewmember who is assigned firefighting responsibility for the flight must make a visual inspection throughout the Class B cargo compartment for familiarization, after the cargo door is closed and secured.

Note 2: This visual inspection is in no manner intended to relieve the pilot of his/her responsibility to ensure safe operation of the airplane, as required by FAR 91.3.

(4) *Option 4:* In addition to the requirements of paragraph (a)(2) of this AD, accomplish the following in accordance with technical data approved by the Manager, Seattle Aircraft Certification Office (for affected Boeing series airplanes), or the Manager, Los Angeles Aircraft Certification Office (for affected McDonnell Douglas series airplanes):

(i) Provide a cargo compartment fire extinguishing system in the Class B cargo compartment that provides an initial fire extinguishant concentration of at least 5 percent of the empty compartment volume of Halon 1301 or equivalent, and a fire suppression extinguishant concentration of at least 3 percent of the empty compartment volume of Halon 1301 or equivalent, for a period of time not less than 90 minutes.

(ii) Provide a smoke or fire detection system in the Class B cargo compartment that meets the requirements of FAR 25.858 (Amdt. 25-54) and also provides an aural and visual warning to the crewmembers in the passenger compartment.

(iii) Provide a means from the flight deck to shut off ventilation system inflow to the Class B cargo compartment.

(iv) Provide a barrier between the Class B cargo compartment and the passenger compartment to prevent the penetration of smoke or flames from the cargo compartment into the passenger compartment. The barrier must extend from the cargo compartment floor to the upper crown area of the fuselage, and from the right sidewall to the left sidewall of the cargo compartment, completely isolating the cargo compartment from the passenger compartment. The barrier and associated seals/interfaces must meet the requirements of FAR 25, Appendix F, Part III (Amdt. 25–60).

(v) Provide appropriate protection of the cockpit voice and flight data recorders, and all systems or components required for safe flight and landing of the airplane, unless it can be demonstrated that these systems are not susceptible to damage in the event of a fire in the Class B cargo compartment.

(vi) Provide illumination of the Class B cargo compartment as specified in paragraphs (b)(4)(vi)(A) and (b)(4)(vi)(B) of this AD:

(A) General area illumination of the cargo with an average illumination of 0.1 foot-candle measured at 40-inch intervals both at one-half the pallet or container height, and at the full pallet or container height, or as approved by the FAA.

(B) Illumination of the longitudinal access pathways, required by paragraph (a)(2)(iv) of this AD, with an average illumination of .05 foot-candle when measured at 40-inch intervals along a line that is within 2 inches of and parallel to the floor centered on the pathway, or illumination under visibility conditions likely to occur in the cargo compartment in the event of a fire, as approved by the FAA.

(vii) Establish FAA-approved procedures and training for responding to alarms, and monitoring and controlling cargo compartment fires.

(viii) Provide a viewport into the Class B cargo compartment from the passenger compartment. The viewport must be located such that a crewmember can readily identify the overall smoke conditions in the compartment prior to entering it.

(ix) Demonstrate the following features and functions:

(A) Fire extinguishant concentration, required by paragraph (b)(4)(i) of this AD, by flight test.

(B) Smoke or fire detection system, required by paragraph (b)(4)(ii) of this AD, by flight test.

(C) Prevention of smoke penetration into occupied compartments [refer to FAR 25.857(b)2 and 25.855(e)2], demonstrated by flight test.

(D) Cargo accessibility, as specified in paragraph (a)(2)(iv) of this AD.

(x) Provide the following systems and equipment:

(A) Provide appropriate protective garments for two persons stored in the passenger compartment, adjacent to the Class B cargo compartment entrance.

(B) Provide a minimum of 120 minutes of protective breathing for one person, and an additional 30 minutes of protective breathing for an additional person. This equipment must meet the requirements of Technical Standard Order (TSO) C–116, Action Notice 8150.2A, or equivalent, and at least 30 minutes of the total protective breathing must be stored adjacent to the Class B cargo compartment entrance. All protective breathing equipment must be located outside the cargo compartment.

(xi) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement:

FOR EACH FLIGHT IN WHICH CARGO IS TRANSPORTED IN THE CLASS B CARGO COMPARTMENT:

Prior to flight, a crewmember who is assigned firefighting responsibility for the flight must make a visual inspection throughout the Class B cargo compartment for familiarization, after the cargo door is closed and secured.

Note 3: This visual inspection is in no manner intended to relieve the pilot of his/her responsibility to ensure safe operation of the airplane, as required by FAR 91.3.

(c) Compliance with paragraph (b)(1) or (b)(2) of this AD constitutes terminating action for the requirements of paragraph (a) of this AD. Compliance with paragraph (b)(3) or (b)(4) of this AD constitutes terminating action for the requirements of paragraphs (a)(1) and (a)(3) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate (for affected Boeing series airplanes); or the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate (for affected McDonnell Douglas series airplanes). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, of the Seattle ACO, or the Manager of the Los Angeles ACO, as appropriate.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO or the Los Angeles ACO.

Note 5: Alternative methods of compliance previously granted for Amendment 39–6557, AD 89–18–12 R1; or Amendment 39–6986, AD 91–10–02; continue to be considered as acceptable alternative methods of compliance with this amendment.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on May 2, 1993.

Issued in Renton, Washington, on April 14, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–9183 Filed 4–19–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 73

[Airspace Docket No. 92–AWP–10]

Consolidation of Restricted Areas R-3107A and R-3107B; Kaula Rock, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action consolidates Restricted Areas R–3107A and R–3107B Kaula Rock, HI, into Restricted Area R-3107. Since the two existing restricted areas are used simultaneously, it is more appropriate to consolidate them into one area. Additionally, this action reduces the time of designation for Restricted Area R–3107. This action does not affect the outer limits or altitudes of the restricted airspace complex as a whole, or change the operating requirements of the airspace.

EFFECTIVE DATE: 0901 UTC, July 22, 1993.

FOR FURTHER INFORMATION CONTACT: Diane Bodenhamer, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3178.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations consolidates Restricted Areas R–3107A and R–3107B Kaula Rock, HI, into Restricted Area R–3107 Kaula Rock, HI. R–3107A is currently designated for continuous use and R–3107B is designated for use 0700–2200 local time daily, other times by NOTAM issued at least 24 hours in advance. R–3107 will be designated for use 0700–2200 local time weekdays, 0700–1800 local time weekends and holidays, other times by NOTAM issued at least 24 hours in advance. This action more accurately reflects usage of the restricted airspace. This action does not affect the outer limits or altitudes of the restricted airspace complex as a whole, or change the operating requirements of the airspace. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. The coordinates for this airspace docket are based on North American Datum 83. Section 73.31 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action does not alter the dimensions of restricted airspace, nor is the mission conducted within the airspace changed. It consolidates two existing areas into one and reduces the time of designation. Accordingly, this action will have no effect on current air traffic procedures or on routing or altitude of civil aircraft operations in the area. The FAA, therefore, finds that there will be no significant impact on the environment as a result of this action.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.31 [Amended]

2. Section 73.31 is amended as follows:

R–3107A Kaula Rock, HI [Removed]

R–3107B Kaula Rock, HI [Removed]

R–3107 Kaula Rock, HI [New]

Boundaries. The airspace within 3 nautical miles of the Island of Kaula (lat. 21°39′16″N., long. 160°32′20″W.),

Designated altitudes, Surface to FL 180.

Time of designation. 0700–2200 local time weekdays; 0700–1800 local time weekends and holidays; other times by NOTAM issued at least 24 hours in advance.

Controlling agency. FAA, Honolulu CERAP.

Using agency. U.S. Navy, Commander, Fleet Area Control and Surveillance Facility, Pearl Harbor, HI.

Issued in Washington, DC, on April 12, 1993.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–9174 Filed 4–19–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 365

[Docket No. RM93–1–000; Order No. 550–A]

Filing Requirements and Ministerial Procedures for Persons Seeking Exempt Wholesale Generator Status; Order Addressing Motions for Rehearing, Reconsideration and Clarification; Amending Regulations; and Interpreting PUHCA Section 32(a)(1)

Issued April 14, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on rehearing and motions for reconsideration and clarification, amending regulations, and interpreting PUHCA section 32(a)(1).

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this order to address motions for rehearing, reconsideration and clarification of Order No. 550, the Commission's final rule establishing filing requirements and ministerial procedures for persons seeking exempt wholesale generator (EWG) status. The order also amends the regulations to more accurately track the criteria of section 32(a)(1) of the Public Utility Holding Company Act of 1935, and to interpret that section regarding EWG determinations for certain owners and operators of eligible facilities.

EFFECTIVE DATE: This order is effective on April 14, 1993.

FOR FURTHER INFORMATION CONTACT: James H. Douglass, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Telephone: (202) 208–2143.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, at 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

On February 10, 1993, the Federal Energy Regulatory Commission (hereafter, Commission) adopted a final rule establishing filing requirements and ministerial procedures for persons seeking exempt wholesale generator (EWG) status pursuant to section 32 of the Public Utility Holding Company Act of 1935 (PUHCA), as amended by section 711 of the Energy Policy Act of 1992 (Energy Policy Act).[1] Filing Requirements and Ministerial Procedures for Persons Seeking Exempt Wholesale Generator Status, Order No. 550, 58 FR 8897 (February 18, 1993) (as corrected at 58 FR 11886 (March 1, 1993)), III FERC Stats. & Regs. ¶30,964 (1993).

On March 12, 1993, Mission Energy Company and U.S. Generating Company[2] (jointly, Mission) and Nevada Sun-Peak Limited Partnership (Sun-Peak) filed motions for reconsideration and clarification of Order No. 550. On March 19, 1993, the National Independent Energy Producers (NIEP) filed a request for rehearing of Order No. 550. The Commission addresses the issues raised by these parties below. In addition, the Commission amends § 365.3(a)(1)(i) of the regulations to more accurately track the requirements of PUHCA section 32(a)(1), interprets section 32(a)(1) with respect to two issues that have arisen in individual EWG applications, and amends § 365.3(a) of the regulations to

[1] Public Law 102–486, 106 Stat. 2776 (1992).

[2] U.S. Generating Company has not previously participated in this proceeding. U.S. Generating Company requests leave to join in Mission's request for clarification. The Commission grants U.S. Generating Company's request.

reflect the interpretations reached herein.

I. Public Reporting Burden

This order contains minor, technical amendments to § 365.3(a) of the regulations. The amendments are intended to ensure that the regulations more precisely track the language of section 32(a)(1) of PUHCA. The amendments will not have a significant impact on the public reporting burden.

The Commission is submitting notification of the amendments to the regulations to OMB. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415]. Comments on the requirements of this order can also be sent to the Office of Information and Regulatory Affairs of OMB [Attention: Desk Officer for Federal Energy Regulatory Commission].

II. Judicial Review

In Order No. 550, the Commission responded to the comments of Enron Power Corp. (Enron) concerning the availability of judicial review of determinations of EWG status. Enron stated that it presumed that EWG determinations are not subject to judicial review under the Federal Power Act (FPA) since section 32 of PUHCA does not implicate the FPA.[3] Enron also stated that it presumed that the Commission's EWG determinations are not subject to judicial review under PUHCA because section 24 of PUHCA refers only to judicial review of orders issued by the Securities and Exchange Commission (SEC).[4]

In response to Enron's comments, the Commission stated in Order No. 550 that it did not interpret section 24 of PUHCA, which refers to orders issued by the SEC, as providing for judicial review of EWG determinations issued by this Commission. However, the Commission also noted that judicial review is provided under section 25 of PUHCA. See 15 U.S.C. 79y.

Sun-Peak requests that the Commission reconsider its view that EWG determinations are not subject to review under section 24 of PUHCA, but may be reviewable under section 25 of PUHCA.

Sun-Peak and Mission point out that there is a 60-day time limit for obtaining judicial review under both section 313(b) of the FPA and section 24 of PUHCA. In contrast, there is no time limit for obtaining judicial review under section 25 of PUHCA. The parties argue that a time limit is necessary to provide finality to EWG determinations. The parties contend that a lack of finality of EWG determinations could cause financing problems for project developers.

Mission acknowledges that the Commission cannot create a statutory deadline for obtaining judicial review, where a deadline does not exist. However, Mission urges the Commission to provide some degree of finality to EWG determinations by pledging to oppose judicial review of issues that are not first raised during the initial EWG application procedure. In this regard, Mission notes that the "exhaustion doctrine" generally provides that claims not raised before an agency may not be raised for the first time on review.[5] Therefore, Mission argues that the Commission should contest efforts to raise issues on judicial review that were not raised during the comment period during the EWG application process.

Sun-Peak also states that section 25 provides for judicial review in the Federal district courts, rather than the Federal Circuit Courts of Appeals. Sun-Peak argues that review by the Federal district courts could cause inconsistency in the interpretation of section 32 of PUHCA.

Sun-Peak contends that Congress inadvertently omitted to amend section 24 of PUHCA to specifically provide for review of EWG determinations. Sun-Peak argues that the Commission should interpret section 24 to apply to all orders issued pursuant to PUHCA, including EWG determinations. Sun-Peak adds that the persons seeking judicial review of decisions involving section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA)[6] were permitted to use the judicial review provisions provided by section 313 of the FPA.[7] In support of this contention, Sun-Peak cites *American Electric Power Company* v. *FERC*, 675 F.2d 1226, 1232 & n.26 (D.C. Cir. 1982) (*American Electric*), *rev'd on other grounds sub nom. American Paper Institute, Inc.* v. *American Electric Power Co.*, 461 U.S. 402 (1983) and *Puerto Rico Electric Power Authority* v. *FERC*, 848 F.2d 243 (D.C. Cir. 1988) (*PREPA*). Sun-Peak argues that, because *American Electric* and *PREPA* permitted persons seeking review of one statute to use the judicial review procedures provided by another statute, the Commission may interpret one section of a statute (PUHCA section 24) to permit judicial review of Commission EWG determinations under another section of the same statute (PUHCA section 32).

Commission Ruling

At the outset, the Commission agrees with Mission and Sun-Peak that achieving finality for EWG determinations is a critical objective. Both project developers and the financial community need regulatory certainty if EWGs are to play a significant role in meeting the Nation's electric power needs. Therefore, the Commission strongly agrees with Mission that persons will be required to raise concerns or objections about EWG applications during the comment period provided for by Order No. 550. In addition, the Commission believes that a person's failure to present concerns or objections to an EWG application during the specified comment period should disqualify that person from raising a new issue on appeal. Accordingly, the Commission may challenge the standing of persons who seek judicial review of EWG determinations without first raising their concerns during the application process.[8]

As to the proper section governing judicial review, we find Sun-Peak's citations to American Electric and PREPA are not on point.

In American Electric, the D.C. Circuit never expressly discussed the applicability of section 313 of the FPA to persons seeking review of the challenged Commission decisions. The D.C. Circuit simply assumed, *sub silentio*, that section 313 was the applicable vehicle for the parties seeking review in that case.[9]

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[3] Under section 313(b) of the FPA, parties to proceedings under the FPA who are aggrieved by orders issued by the Commission may appeal to the Circuit Courts of Appeal within 60 days of the order on rehearing. See 16 U.S.C. 825*l*(b).

[4] Section 24 of PUHCA provides that persons aggrieved by an order issued by the SEC under PUHCA may obtain review of such order in the Circuit Courts of Appeals within 60 days after the entry of such order. See 15 U.S.C. 79x.

[5] Mission cites *Foundation on Economic Trends* v. *Heckler*, 756 F.2d 143, 156 (D.C. Cir. 1985); *Washington Ass'n for Television and Children* v. *FCC*, 712 F.2d 677, 680 (D.C. Cir. 1983); *U.S.* v. *L.A. Tucker Truck Lines*, 344 U.S. 33, 37 (1952); and *Cheney RR Co., Inc.* v. *ICC*, 902 F.24 66, 70 n.2 (D.C. Cir.), *cert. denied*, 111 S. Ct. 519 (1990).

[6] 16 U.S.C. 824a–3.

[7] 16 U.S.C. 825*l*.

[8] As a general matter, the Commission does not participate in District Court proceedings. Therefore, the Commission is unwilling to agree at this point in time to oppose on such grounds in the future *all* such appeals in all circumstances. The Commission does not believe that such an open-ended, all-encompassing commitment at this time would be wise.

[9] See 675 F.2d at 1232 n.26. In this regard, see Webster v. Fall, 266 U.S. 507, 511 (1925) ("Questions which merely lurk in the record,

Continued

Moreover, in American Electric, four provisions of the Commission's regulations adopted under PURPA were challenged: (1) The "full avoided cost" rule; (2) the "simultaneous transaction" rule; (3) the grant of blanket authority to qualifying facilities (QFs) to interconnect with electric utilities without meeting the requirements of sections 210 and 212 of the FPA; and (4) the failure to adopt "fuel use" criteria in determining what cogeneration facilities are QFs.[10]

The first three of the challenged regulations were promulgated to implement section 210 of PURPA,[11] which remained a stand-alone PURPA provision. However, the fourth regulation challenged was promulgated to implement sections 3 (17)–(22) of the FPA, as amended by section 201 of PURPA.[12] Since one of the four challenged regulations was promulgated pursuant to the Commission's authority under the FPA, as amended by PURPA, the *American Electric* case was properly before the D.C. Circuit. See 16 U.S.C. 825*l*(b) (party to proceeding under the FPA may obtain review in the Circuit Courts of Appeal).[13]

While the D.C. Circuit in *PREPA* considered the "application of section 210 [of PURPA] to a cogeneration arrangement that involves separate ownership of" the producing and consuming functions,[14] the issue in the case was whether the facility, as determined by the Commission, fell within the statutory definition of "qualifying cogeneration facility," as defined in section 3(18) of the FPA. In other words, *PREPA* concerned whether the facility was a QF, as defined in the FPA. *PREPA* did not address whether a QF was entitled to backup power under the Commission's regulations promulgated pursuant to section 210 of PURPA. Thus, as in *American Electric*, the D.C. Circuit had jurisdiction in *PREPA* pursuant to section 313 of the FPA.[15]

The Commission continues to believe that section 24 of PUHCA does not provide a basis for judicial review of this Commission's decisions since the text of section 24 expressly refers to orders issued by "the Commission" (*i.e.*, the SEC).[16] Additionally, when Congress drafted section 32 of PUHCA it clearly distinguished between powers granted to "the Commission" (*i.e.*, SEC) and powers granted to the "Federal Energy Regulatory Commission."[17] Each time section 32 references this Commission, it refers to the "Federal Energy Regulatory Commission." Congress left unchanged the section 24 reference to "the Commission." Accordingly, the Commission does not find support for changing the interpretation of section 24 that it adopted in Order No. 550.

III. Section 365.7 of the Regulations

In Order No. 550, the Commission stated that an EWG determination is based on the facts that are presented to the Commission. The Commission noted that any material variation from those facts may render an EWG determination invalid. Therefore, the Commission added a section to the regulations that requires that if there is any material change in facts that may affect an EWG's eligibility for EWG status under section 32, the EWG must, within 60 days: Apply for a new determination of EWG status; file a written explanation of why the material change in facts does not affect the EWG's status; or notify the Commission that it no longer seeks to maintain EWG status. This requirement is incorporated in § 365.7 of the regulations.

Sun-Peak states that § 365.7 may cause an EWG unknowingly to lose its EWG status if it fails to recognize that a "material fact" has changed. Sun-Peak states that by comparison the SEC provides prior notice if, for example, it believes that a question exists concerning a holding company's continuing qualification for an exemption. Sun-Peak states that prior notice is provided by the SEC that such a question exists because the penalties for losing an exemption under PUHCA are "potentially draconian."

Sun-Peak argues that prior notice that an EWG determination may be invalid is similarly essential, so that an EWG owner may ascertain whether a subsidiary has ceased to be exempt from PUHCA, thereby subjecting its parent to the potential consequences of being a holding company. Sun-Peak also states that the penalty for failure to comply with § 365.7 is unclear, and Sun-Peak expresses concern that a failure to comply with § 365.7 may render an existing EWG determination invalid. Sun-Peak further argues that the term "material change" is too vague to provide adequate notice of what factual changes warrant a new filing.

Sun-Peak requests that the Commission provide prior notice before any EWG determination is terminated. Sun-Peak also requests that the Commission clarify that an EWG will not lose its status if it fails to make a filing required by § 365.7.

Commission Ruling

The Commission will deny reconsideration. Section 365.7 is intended to provide a process whereby persons may confirm EWG status when a material change in facts occurs after the Commission's initial determination. When a material change in facts occurs, a person that was an EWG might no longer qualify to be an EWG. However, the Commission does not intend to actively seek to terminate a person's EWG status; indeed, the Commission typically will not be aware that any change in facts, material or otherwise, has even occurred. The Commission instead will rely in the first instance on the EWG itself to be vigilant to ensure that it continues to qualify to be an EWG. Moreover, if there is any question concerning whether a change is material, *i.e.*, whether the change will adversely affect EWG status, the EWG can, prior to such change, file another request for EWG status based on the facts that will exist if the change occurs.[18]

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neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.") Accord, *Illinois State Board of Elections* v. *Socialist Workers Party*, 440 U.S. 173, 183 (1979); U.S. v. *L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 38 (1952).

[10] 675 F.2d at 1229.

[11] Order No. 69, Small Power Production and Cogeneration Facilities; Regulations Implementing section 210 of the Public Utility Regulatory Policies Act of 1978, FERC Stats. and Regs., Reg. Preambles 1977–81, ¶ 30,128 (1980).

[12] Order No. 70, Small Power Production and Cogeneration Facilities—Qualifying Status, FERC Stats. and Regs., Reg. Preambles 1977–81, ¶ 34,134 (1980). Unlike section 210 of PURPA, which did not amend the FPA, section 201 of PURPA amended the FPA by adding new paragraphs (17)–(22) to section 3 thereof. Amended sections 3 (17) and (18) of the FPA provide the statutory authority for the Commission to determine which entities qualify as QFs.

[13] The rule is that "[w]hen an agency decision has two distinct bases, one of which provides for exclusive jurisdiction in the courts of appeals, the entire decision is reviewable exclusively in the appellate court." *Suburban O'Hare Commission* v. *Dole*, 787 F.2d 186, 192 (7th Cir.), *cert. denied*, 479 U.S. 847 (1986).

However, this rule is inapplicable to judicial review of agency decisions that do not have two distinct bases, *i.e.*, EWG determinations.

[14] 848 F.2d at 245.

[15] See Media Access Project v. FCC, 883 F.2d 1063, 1066–67 (D.C. Cir. 1989) (where two statutes provide parallel agency authority, statute providing for review in appeals courts overrides statute providing for general review). Again, this rule is inapplicable to judicial review of agency decisions that do not have two distinct statutory bases, such as EWG determinations.

[16] Compare 15 U.S.C. 79x (providing for judicial review of "Commission" orders under PUHCA in the Circuit Courts of Appeal within 60 days of the entry of such orders) with 15 U.S.C. 79b(a)(6) (defining "Commission" as the SEC).

[17] Compare sections 32(g), (h), and (i) (discussing jurisdiction of "the Commission," *i.e.*, the SEC) with section 32(a) (discussing determinations to be made by the "Federal Energy Regulatory Commission").

[18] Additionally, as noted in Order No. 550, violations can be reported to the SEC for

IV. Deficiency Process

In Order No. 550, the Commission stated that it would not issue deficiency letters for applications that appear to be incomplete. The Commission stated that the absolute 60-day deadline for action does not leave adequate time for review of deficiency responses or for amendments to filings. Therefore, the Commission stated that it will either grant or deny an application within the 60-day time period.[19] However, if the Commission denies an application, the Commission noted that an applicant may refile an application with additional information or explanation.

NIEP states that the requirement that applicants file new applications to correct deficiencies is extremely burdensome. As an alternative, NIEP argues that the Commission should implement a limited deficiency procedure that would permit the Commission to notify applicants of deficiencies within 10 days after an application is filed and to permit amendments within 10 days after notification of a deficiency.

Commission Ruling

Now that § 365.3 of the regulations is in place to guide EWG applicants, the Commission believes there will be little excuse for filing deficient applications. The EWG filing requirements, which follow the requirements of section 32(a)(1) of PUHCA, are simple and straightforward. Applicants need only provide, in a straightforward manner, the sworn statement, representations, and information set forth in § 365.3 of the regulations.

The Commission notes that some applicants, instead of providing the required information and statements, have filed complex applications often including extraneous and irrelevant information, from which the Commission is supposed to deduce that the applicant is an EWG. The Commission attributes this to the fact that the regulations have only recently been promulgated, and anticipates that applicants will file sufficient (as opposed to deficient) applications in the future. The Commission urges applicants to file concise and straightforward applications in conformance with § 365.3 of the regulations.[20] The information and statements needed to demonstrate EWG status are neither complex nor burdensome. Accordingly, the Commission rejects NIEP's suggestion that the Commission inform the applicant within 10 days of receipt of an application of any additional information required, and, if so, give the applicant 10 days to respond with the necessary information.[21]

NIEP's proposed deficiency procedure would be extremely burdensome to the Commission. Under the procedures specified in Order No. 550, the Commission will publish notice of an EWG application in the **Federal Register** and give interested persons an opportunity to comment. The Commission's substantive review of an EWG application normally cannot be completed until after the comment period has expired. Adopting NIEP's suggestion would, therefore, require the Commission's staff to immediately review an EWG application and, before having the benefit of any comments, effectively determine whether an application is complete, *i.e.* whether the application satisfies the applicable criteria for EWG status. Such a procedure would put Commission staff in an untenable position.[22]

NIEP suggests that its proposal is similar to procedures employed with respect to QF applications under PURPA. While there are some similarities, there are also important differences. While the 90-day deadline for Commission action on QF applications is regulatory,[23] and thus can be extended by the Commission in appropriate circumstances, the 60-day deadline for Commission action on EWG applications is statutory, and thus cannot be extended by the Commission. Moreover, the filing of a QF application under 18 CFR 292.207(b) does not deem an applicant a QF until the Commission acts.

Finally, the Commission rejects NIEP's suggestion that deficiencies, such as the deficiency presented in NW Energy (Williams Lake) Limited Partnership, 62 FERC ¶61,235 (1993), are somehow minor. As noted above, Congress clearly specified the statutory criteria for EWG status. Failure to include a statement that an applicant satisfies one of the statutory criteria for EWG status cannot be characterized as a "minor deficiency."

V. Interpretations of PUHCA Section 32(a)(1)

In Order No. 550, the Commission declined to act on a number of requests for interpretations of section 32(a)(1) of PUHCA. The Commission stated that this proceeding is not intended to answer each and every question that may be presented concerning EWGs and section 32, and that questions would be addressed in individual applications. As a general matter, the Commission continues to believe that interpretation issues should be addressed on a case-by-case basis. However, now that the Commission has had some limited experience in interpreting section 32 in the context of addressing concrete factual situations,[24] the Commission believes it important to address two interpretation issues which could have

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appropriate action or the SEC, *sua sponte*, may take appropriate action.

[19] The 60-day time period for Commission action was found to begin on the date that an application, including any required filing fee, is received by the Secretary.

[20] Unless the sworn statement, representations, and information contained in an application are challenged during the comment period, or are obviously factually or legally inaccurate, the Commission intends to rely on such information and statements. This is entirely consistent with the ministerial role Congress intended the Commission to play with respect to EWG applications. However, if an application fails to make the sworn representations that it meets the specific requirements of section 32(a)(1), the Commission must assume there is a potential problem meeting the EWG requirements and will have to further analyze the information provided.

[21] The Commission also rejects NIEP's suggestion that if the applicant fails to respond within the 10-day period, the 60-day period permitted for Commission review begin again when the Commission receives the complete application. Congress clearly provided the Commission shall make its decision within 60 days of receipt of an application. Congress also provided that a person applying in good faith for an EWG determination shall be deemed an EWG, with all exemptions provided, see PUHCA section 32(e), until the Commission makes such determination. Accepting NIEP's suggestion could permit an EWG applicant to be deemed an EWG well beyond the 60-day period intended by Congress.

[22] While the Commission staff cannot issue deficiency letters under part 365 of the regulations, the Commission does not mean to suggest that staff cannot communicate in uncontested cases to discuss possible problems with applicants. To the contrary, the Commission encourages such activity. If based on discussions with staff an applicant determines that a deficiency exists, it can voluntarily move to withdraw its pending application and file another application correcting the perceived deficiency. However, this is quite different from a procedure that would require staff to review applications shortly after receipt by the Commission.

[23] See 18 CFR 292.207(b)(5).

[24] *See* Costanera Power Corporation, 61 FERC ¶61,335 (1992) (only one person may request EWG status per application); Richmond Power Enterprise, L.P. *et al.*, 62 FERC ¶ 61,157 (1993) (person otherwise meeting EWG requirement may engage in sale of by-products of electric generation such as steam and fly-ash; EWG may own a qualifying facility (QF); facility may simultaneously be an eligible facility and a QF); KFM Pepperell, Inc., *et al.*, 62 FERC ¶ 61,182 (1993) (an owner or operator, or an entity that both owns and operates an eligible facility, must also sell electric energy at wholesale in order to be an EWG); Louis Dreyfus Electric Power, Inc., 62 FERC ¶ 61,234 (1993) (EWG must generate at least a portion of the electric energy it sells; eligible facilities must be physical facilities); Southern Electric Wholesale Generators, Inc., *et al.*, 63 FERC ¶ 61,050 (1993) (indirect ownership/operation must be through a PUHCA section 2(a)(11)(B) affiliate); InterAmerican Energy Leasing Co., 62 FERC ¶ 61,283 (1933) (an owner lessor of an eligible facility must also sell electric energy at wholesale in order to be an EWG).

a significant and recurring impact on the development of EWGs as contemplated by Congress.

The two issues the Commission addresses herein arose in recent cases in which the Commission denied EWG status. They involve the PUHCA section 32(a)(1) requirement that an EWG be engaged directly, or indirectly through one or more PUHCA section 2(a)(11)(B) affiliates, and exclusively in the business of owning and/or operating eligible facilities *and* selling electric energy at wholesale. In *KFM Pepperell, Inc. et al.* (*KFM*), *supra*, the Commission granted EWG status to the owner of an eligible facility who would also be selling electric energy at wholesale from the eligible facility, but denied EWG status to the operator of the eligible facility because the operator would not be selling energy at wholesale, *i.e.*, the operator would not meet the criterion of PUHCA section 32(a)(1) that it be engaged in selling electric energy at wholesale. Likewise, in *InterAmerican Energy Leasing Co.* (*InterAmerican*), *supra*, the Commission denied EWG status to an entity who would own and lease an eligible facility, but who would not also be engaged in selling electric energy at wholesale from the facility or any other eligible facility.

The Commission's decisions in *KFM* and *InterAmerican* were based on a plain reading of PUHCA section 32(a)(1), which states that an EWG is:

> Any person determined by the [FERC] to be engaged directly, or indirectly through one or more affiliates as defined in section 2(a)(11)(B), and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities *and* selling electric energy at wholesale. [Emphasis added.]

However, the Commission believes that the result reached in those cases, without further interpretation of the "and selling" requirement, may have the unintended consequence of discouraging the development of EWGs as contemplated by Congress.[25] Accordingly, the Commission takes this opportunity to refine and clarify its interpretation of the "and selling" criterion of section 32(a)(1) as its applies to certain types of owners and operators of eligible facilities.

In the case of a person engaged directly, or indirectly through one or more section 2(a)(11)(B) affiliates, and exclusively in the business of owning all or part of one or more eligible facilities and leasing those eligible facilities, the Commission believes it's appropriate and consistent with the intent of the statute to treat the lease of the facility as a sale of electric energy at wholesale for purposes of section 32(a)(1), absent a case-specific determination that to do otherwise could harm the public interest. A typical financing arrangement for eligible facilities may be one in which a passive owner invests in eligible facilities, but leases the facilities to public utility companies or EWGs who will operate and sell electric energy from the facilities and who will have management discretion and control over the operation of the facilities. In this situation, the Commission does not believe Congress intended that the entity having control over the facility and the sales therefrom could obtain EWG status, but that the passive owner could not. In addition, even in situations in which the owner lessor is not totally passive, but does retain some amount of control over the eligible facility, the Commission believes the intent of the PUHCA amendments is met if the lease is construed to be a wholesale sale of energy from the eligible facility.[26]

In the case of a person engaged directly, or indirectly through one or more section 2(a)(11)(B) affiliates, and exclusively in the business of operating all or part of one or more eligible facilities, the Commission believes it appropriate and consistent with the intent of the statute to deem the operator as being engaged in sales of electric energy at wholesale if it has an agency relationship with the person selling electric energy at wholesale from the eligible facility.[27] A typical arrangement for eligible facilities may be one in which an operator of an eligible facility will perform operation and maintenance (O&M) for the facility pursuant to an O&M agreement with the person who owns and sells electric energy from the facility. While the operator will be responsible for day-to-day operations, these agreements typically provide that the owner/seller will direct or control the services provided by the operator. In other words, the operator in effect is an agent of the owner/seller because the owner/seller, at a minimum, directs the activities of the operator. Accordingly, where the operator of an eligible facility or facilities carries out its responsibilities subject to the direction of the person who sells power at wholesale from the eligible facility, the Commission will impute the seller's sales of electric energy at wholesale to the operator,[28] absent a case-specific determination that to do otherwise could harm the public interest.

The Commission's interpretation of section 32(a)(1), as discussed above, is influenced by the practical and commercial effect that would obtain from a contrary interpretation of that section in conjunction with section 32(i) of PUHCA. Section 32(i) provides:

> In the case of any person engaged directly and exclusively in the business of owning or operating (or both owning and operating) all or part of one or more eligible facilities, an advisory letter issued by the [SEC] staff under this Act after the date of enactment of this section, or an order issued by the [SEC] after the date of enactment of this section, shall not be required for the purpose, or have the effect, of exempting such person from treatment as an electric utility company under section 2(a)(3) or exempting such person from any provision of this Act.

While the agency primarily responsible for interpreting section 32(i) is the SEC, and not this Commission, the Commission believes the section could be construed to prohibit certain owners and/or operators of eligible facilities from obtaining a PUHCA exemption other than through a section 32(a)(1) EWG determination.[29] Thus, if this Commission were to construe section 32(a)(1) narrowly so as to preclude owner/lessors and operators from obtaining EWG status under that section of PUHCA, they could be prohibited from seeking exemptions via SEC Staff

[25] In introducing S. 341, which contained the original EWG provisions, Senator Bennett Johnston stated, "The bill changes PUHCA only to the extent necessary to allow independent power production to go forward. * * * There is an emerging consensus that IPP's and competitive acquisition of wholesale power should at least be an option and thus that the separate statutory obstacles to independent power production contained in the Holding Company Act should be removed. The purpose of title XV is the removal of these obstacles for utilities and nonutilities alike." 137 Cong. Rec. S1512–13 (daily ed. Feb. 5, 1991).

[26] The Commission notes that the PUHCA section 32(a)(2) definition of eligible facility contains a proviso that leases of certain eligible facilities (those used for the generation of electric energy and leased to one or more public utility companies as defined in PUHCA) shall be treated as a sale of electric energy at wholesale for purposes of sections 205 and 206 of the FPA. See also 18 CFR 35.2(a), which defines FPA jurisdictional electric service to include such service "whether by leasing or other arrangements."

[27] Whether the operator is a public utility subject, *inter alia*, to section 205 of the FPA is a separate issue. See Bechtel Power Corp., 60 FERC ¶ 61,156 (1992).

[28] The Commission notes that this information was not presented in *KFM Pepperell, supra*.

[29] Section 32(i) originated in the House of Representatives. The only legislative history of which the Commission is aware is contained in the section-by-section analysis contained in H. Rep. No. 102–474 (p. 192) (Mar. 30, 1992). It states: "Fourth, section 711 forecloses an independent power producer from obtaining a PUHCA exemption to operate as such through action by the Securities and Exchange Commission (SEC) or its staff. Henceforth, IPPs must pass scrutiny at FERC under the provisions of this Act."

advisory letters or SEC orders under any other sections of PUHCA. The Commission does not believe Congress intended this incongruous result, particularly in view of the facts that such entities were able to seek exemptions via SEC Staff advisory letters and SEC orders prior to the new statute, and the new statute was intended to eliminate (not add to) prior PUHCA restrictions.

The interpretations announced herein do not attempt to address all the various permutations and issues that may arise in the future regarding owners and operators of eligible facilities. However, the Commission believes these general interpretations do address some fundamental problems that have arisen regarding the emerging development of EWGs, and will provide useful generic guidance to the industry. Other interpretation issues will be addressed on a case-by-case basis.

VI. Amendment to Section 365.3(a)

The Commission is amending § 365.3(a)(1)(i) of the regulations. In Order No. 550, § 365.3(a)(1)(i) of the regulations read as follows:

> A representation that the applicant is engaged directly, or indirectly through one or more affiliates, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale; and

The Commission is revising this section of the regulations so that it will more accurately track the requirements of PUHCA section 32(a)(1) with respect to the definition of "affiliates." The revised version of § 365.3(a)(1)(i) will read as follows:

> A representation that the applicant is engaged directly, or indirectly through one or more affiliates as defined in section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale:

In light of the interpretation of PUHCA section 32(a)(1) in the preceding section, regarding operators of eligible facilities, the Commission is adding a new paragraph to § 365.3(a)(1), as follows:

> (iii) If the applicant intends to satisfy the "and selling electric energy at wholesale" requirement of paragraph (a)(1)(i) as a person engaged exclusively in operating all or part of one or more eligible facilities, a representation that the operator has an agency relationship with the person (or persons) who sells electric energy at wholesale from the eligible facility (or facilities).

In light of the interpretation of lease arrangements in the preceding section, the Commission is also revising § 365.3(a)(2)(ii) to read as follows:

> (ii) Any lease arrangements involving the facilities, including leases to one or more public utility companies; and

VII. Regulatory Flexibility Certification Statement

The Regulatory Flexibility Act [30] requires rulemakings to either contain a description and analysis of the impact the rule will have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. This order makes minor, technical amendments to the regulations adopted in Order No. 550. These minor, technical amendments have no impact on the Commission's certification in Order No. 550 that this rulemaking will not have a significant economic impact on a substantial number of small entities.

VIII. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[31] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[32] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or that does not substantially change the effect of legislation or regulations being amended.[33] This order makes minor, technical revisions to the regulations adopted in Order No. 550. Accordingly, no environmental consideration is necessary.

IX. Information Collection Statement

The Office of Management and Budget's (OMB) regulations [34] require that OMB approve certain information collection and recordkeeping requirements imposed by an agency. The information collection requirement affected by this order is FERC–598 (Determinations for Entities Seeking Exempt Wholesale Generator Status).

[30] 5 U.S.C. 601–612.

[31] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. and Regs. ¶30,783 (1987).

[32] 18 CFR 380.4.

[33] 18 CFR 380.4(a)(2)(ii).

[34] 5 CFR 1320.12, as authorized by Public Law 96–511, 44 U.S.C. chapter 35, the Paperwork Reduction Act of 1980.

This order makes minor, technical revisions to part 365 of the regulations. The Commission will notify OMB of these revisions.

X. Administrative Findings and Effective Date

This order is in response to issues raised in motions for clarification, reconsideration and rehearing filed by intervenors in this proceeding. Therefore, the Commission finds that no further notice and comment period is required. The Commission finds that good cause exists to make this order effective immediately.[35] The revisions to part 365 of the regulations contained in this order are technical in nature and are necessary to facilitate the Commission's consideration of ongoing EWG proceedings.

Accordingly, this order is effective April 14, 1993.

List of Subjects in 18 CFR Part 365

Electric power, Exempt wholesale generators, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission is amending part 365, title 18, chapter I of the Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 365—FILING REQUIREMENTS AND MINISTERIAL PROCEDURES FOR PERSONS SEEKING EXEMPT WHOLESALE GENERATOR STATUS

1. The authority citation for part 365 is revised to read as follows:

Authority: 15 U.S.C. 79.

2. In § 365.3, paragraph (a)(1) (i) and (ii) are revised, paragraph (a)(1)(iii) is added, and paragraph (a)(2)(ii) is revised, to read as follows:

§ 365.3 Contents of application and procedure for filing.

(a) * * *

(1) * * *

(i) A representation that the applicant is engaged directly, or indirectly through one or more affiliates as defined in section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale;

(ii) Any exceptions for foreign sales of power at retail; and

(iii) If the applicant intends to satisfy the "and selling electric energy at

[35] *See* 5 U.S.C. 553(b).

wholesale" requirement of paragraph (a)(1)(i) as a person engaged exclusively in operating all or part of one or more eligible facilities, a representation that the operator has an agency relationship with the person (or persons) who sells electric energy at wholesale from the eligible facility (or facilities).

(2) * * *

(ii) Any lease arrangements involving the facilities, including leases to one or more public utility companies; and

* * * * *

[FR Doc. 93-9178 Filed 4-19-93; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 91F-0139]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 5-sulfo-1,3-benzenedicarboxylic acid, monosodium salt in polyester resins (including alkyd type) intended for use as components of adhesives in contact with food. This action is in response to a petition filed by Eastman Kodak Co.

DATES: Effective April 20, 1993; written objections and requests for a hearing by May 20, 1993.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 1, 1991 (56 FR 20005), FDA announced that a food additive petition (FAP 1B4251) had been filed by Eastman Kodak Co., P.O. Box 511, Kingsport, TN 37662, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of 1,3-benzenedicarboxylic acid, 5-sulfo-, monosodium salt in polyester resins (including alkyd type) intended as components of adhesives in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe, and that 21 CFR 175.105 should be amended as set forth below. The agency further concludes that the additive should be identified as 5-sulfo-1,3-benzenedicarboxylic acid, monosodium salt because it is the preferred scientific name rather than 1,3-benzenedicarboxylic acid, 5-sulfo-, monosodium salt as described in the filing notice.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before May 20, 1993, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 175.105 is amended in paragraph (c)(5) by alphabetically adding a new entry to the table under the heading "Substances" and the subheading "Acids," appearing after the entry for "Polyester resins * * *." For the convenience of the reader, the introductory text for "Polyester resins * * *" is republished to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * * * * * *	
Polyester resins (including alkyd type), as the basic polymer, formed as esters when one or more of the following acids are made to react with one or more of the following alcohols:	
Acids:	
* * * * * * *	
5-sulfo-1,3-benzenedicarboxylic acid, monosodium salt (CAS Reg. No. 6362-79-4).	
* * * * * * *	

Dated: April 2, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93-9112 Filed 4-19-93; 8:45 am]

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21 CFR Part 175

[Docket No. 89F-0176]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of disodium 4-isodecyl sulfosuccinate as a component of adhesives for articles intended to contact food. This action responds to a petition filed by the American Cyanamid Co.

DATES: Effective April 20, 1993; written objections and requests for a hearing by May 20, 1993.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 13, 1989 (54 FR 25174), FDA announced that a food additive petition (FAP 9B4122) had been filed by the American Cyanamid Co., One Cyanamid Plaza, Wayne, NJ 07470, proposing that § 175.105 *Adhesives* (21 CFR 175.105) and § 178.3400 *Emulsifiers and/or surface-active agents* (21 CFR 178.3400) of the food additive regulations be amended to provide for the safe use of disodium 4-isodecyl sulfosuccinate for use as a component of adhesives and as an emulsifier in the production of food-contact polymers. The petitioner has requested that, at this time, the agency proceed only with the regulation of the additive for use as a component of adhesives in food-contact materials. The agency's decision regarding the petitioned use of the additive as an emulsifier in the production of food-contact polymers will be addressed in a future **Federal Register** document.

FDA has evaluated data in the petition and other relevant material. The agency concludes that these data establish the safe use of disodium 4-isodecyl sulfosuccinate as a component of adhesives for articles intended to contact food, and that § 175.105 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before May 20, 1993, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 175.105 is amended in paragraph (c)(5) by alphabetically adding a new entry to the table to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * * * * * *	
Disodium 4-isodecyl sulfosuccinate (CAS Reg. No. 37294-49-8)	
* * * * * * *	

Dated: April 2, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93-9113 Filed 4-19-93; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 177

[Docket No. 91F-0389]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for an alternate method for determining the maximum *n*-hexane-extractable fraction of the polyolefins in *n*-hexane. This action is in response to a petition filed by Quantum Chemical Corp.

DATES: Effective April 20, 1993; written objections and requests for a hearing by May 20, 1993.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 6, 1991 (56 FR 56656), FDA announced that a food additive petition (FAP 1B4291) had been filed by Quantum Chemical Corp., USI Division, 8805 North Tabler Rd., Morris, IL 60450, proposing that § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide an alternate method for determining the maximum extractable fraction of the polyolefins in *n*-hexane.

FDA has evaluated data in the petition and other relevant material. The agency finds that the proposed alternate method is suitable for determining the maximum *n*-hexane-extractable fraction of polyolefin and yields results equivalent to the existing method. Therefore, the agency concludes that the regulations in § 177.1520(d)(3)(ii) be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Any person who will be adversely affected by this regulation may at any time on or before May 20, 1993, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 177.1520 is amended by revising the introductory text of paragraph (d)(3)(ii) and by adding new paragraphs (d)(3)(ii)(*e*) through (d)(3)(ii)(*i*) to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(d) * * *

(3) * * *

(ii) *Olefin copolymers described in paragraph (a)(3)(i) of this section and polyethylene.* A preweighed sample is extracted at 50 °C for 2 hours and filtered. The filtrate is evaporated and the total residue weighed as a measure of the solvent extractable fraction. Alternatively, the sample is reweighed after the extraction period to give a measure of the solvent extractable fraction. The maximum *n*-hexane-extractable fraction may be determined by the methods set forth in paragraphs (d)(3)(ii)(*a*) through (d)(3)(ii)(*i*) of this section.

* * * * *

(*e*) *Extraction apparatus for alternate method.* Two-liter extraction vessel, such as a resin kettle or round bottom flask, fitted with an Allihn condenser (size C), a 45/50 male joint with a Teflon sleeve, and a Teflon coated stir bar. Water bath maintained at 49.5 °C ±0.5 °C containing a submersible magnetic stirrer motor with power supply. Other suitable means of maintaining temperature control, such as electric heating mantles, may be used provided that the temperature range can be strictly maintained.

(*f*) *Sample basket (Optional).* A perforated stainless steel cylindrical basket that is approximately 1.5 inches in diameter, 1.6 inches high, and has perforations of 0.125 inches in diameter for 33 holes/in^2, or 40 percent open area. The basket should pass freely through the 45/50 female joint of the extraction flask. A No. 6–32 stainless steel eye-bolt is attached to the lid for positioning the basket in the extraction vessel. The positioning rod, approximately 18 inches long and made from 1/16 inch outside diameter 316 stainless steel welding rod or equivalent and hooked at both ends, is used to position the basket in the extraction apparatus.

(g) *Vacuum oven.* Capable of maintaining 80 °C ±5 °C and a minimum of 635 millimeters of mercury pressure.

(h) *Reagents. n*-Hexane, reagent or spectrograde, aromatic free (less than 1 milligram per liter), minimum 85 percent *n*-hexane. This reagent may be reused until it contains a maximum of 1.5 grams polyolefin extractables or has been used for 12 determinations.

(i) *Procedure.* Assemble the extraction vessel, condenser, and magnetic stir bar. Add *n*-hexane (1 liter) to the extraction vessel and clamp the assembly into a water bath set at 49.5 °C ±0.5 °C. Start the water flowing through the jacket of the reflux condenser. Adjust the air flow through the stirring motor to give a smooth and uniform stir rate. Allow the *n*-hexane to preheat for 1 hour to bring the temperature to 49.5 °C±0.5 °C. Temperature is a critical factor in this analysis and it must not vary more than 1 °C. If the temperature exceeds these limits, the test must be discontinued and restarted. Blown, compression molded, or extrusion cast films can be tested. Ideally, the film should be prepared by the same process as will be used with the production resin. Using gloves and metal tweezers to avoid sample contamination, cut about 2.7 grams of the prepared film (4 mils or less in thickness) into about 1-inch squares using clean sharp scissors. Proceed with Option 1 or 2.

Option 1. Using tweezers and noting the number of film pieces, transfer 2.5 grams (accurately weighed to 0.1 milligram) of polymer to the extraction vessel. Extract the film sample for 2 hours. Allow the vessel to cool and filter the contents through a fritted porcelain funnel. Wash the film pieces with fresh *n*-hexane, aspirate to dryness, and transfer, using tweezers, to a beaker. Recount the film pieces to verify that none were lost during the transfer. Place the beaker in the vacuum oven for 2 hours at 80 °C±5 °C. After 2 hours, remove and place in a desiccator to cool to room temperature (about 1 hour). After cooling, reweigh the film pieces to the nearest 0.1 milligram. Calculate the percent hexane-extractables content from the weight loss of the original sample. Multiply the result by 0.935 and compare with extraction limits in paragraph (c) of this section. Repeat the above procedure for successive samples.

Option 2. Transfer 2.5±0.05 grams of the prepared 1-inch film sections into a tared sample basket and accurately weigh to the nearest 0.1 milligram. Carefully raise the condenser until the hook on the positioning rod is above the neck of the 2-liter extraction vessel. The basket should be totally below the level of *n*-hexane solvent. Extract the sample resin film for 2 hours and then raise the basket above the solvent level to drain momentarily. Remove the basket and rinse the contents by immersing several times in fresh *n*-hexane. Allow the basket to dry between rinsings. Remove the excess solvent by briefly blowing the basket with a stream of nitrogen or dry air. Place the basket in the vacuum oven for 2 hours at 80 °C±5 °C. After 2 hours, remove and place in a desiccator to cool to room temperature (about 1 hour). After cooling, reweigh the basket to the nearest 0.1 milligram. Calculate the percent hexane extractables content from the weight loss of the original sample. Multiply the result by 0.935 and compare with extraction limits in paragraph (c) of this section. Repeat the above procedure for successive samples. The same solvent charge should remain clear and can be used for at least 12 determinations. Applications of solvent reuse should be confirmed for each resin type before use.

* * * * *

Dated: April 2, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–9114 Filed 4–19–93; 8:45 am]

BILLING CODE 4160–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–59; RM–7923, RM–8042]

Radio Broadcasting Services; Bradenton and High Point, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 278C for Channel 277C1 at Bradenton, Florida, and modifies the license for Station WDUV (FM) to specify operation on the higher powered channel, at the request of Sunshine State Broadcasting Company, Inc. See 57 FR 11458, April 3, 1992. Channel 278C can be allotted to Bradenton, Florida, in compliance with the Commission's minimum distance separation requirements with a site restriction of 41.7 kilometers (25.9 miles) northeast, in order to avoid a short-spacing to a construction permit for Station WQOL(FM), Channel 279C2, Vero Beach, Florida and the licensed site of Station WRUF(FM), Channel 279C1, Gainesville, Florida. The coordinates for Channel 278C at Bradenton are North Latitude 27–49–20 and West Longitude 82–21–50. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 28, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–59, adopted March 23, 1993, and released April 14, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service Inc., (202) 857–3800, 1919 M Street NW., room 246, or 2100 M Street NW., suite 140, Washington, DC 20037. In Gettysburg, PA, the location is 1270 Fairfield Road, Gettysburg, PA 17325, (717) 337–1433.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 277C1 and adding Channel 278C at Bradenton.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–9125 Filed 4–19–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, and 176

[Docket No. HM-214; Notice No. 93-9]

RIN: 2137-AC31

Oil Spill Prevention and Response Plans; Request for Comments and Notice of Public Hearing

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Interim final rule; reopening of comment period and notice of public hearing.

SUMMARY: RSPA published an interim final rule to address oil spill prevention and response plans in the Federal Register on February 2, 1993 (58 FR 6864). This document responds to requests for an extension of the comment period and a public hearing. In light of petitions and comments received, RSPA is reopening the comment period and announcing a public hearing to gain more detailed information on the interim final rule.

DATES: *Written comments.* The date for receiving written comments is extended from April 5, 1993, to June 3, 1993.

Public Hearing. The public hearing will be held from 9:30 a.m. to 5 p.m. on May 13, 1993, in Washington, DC.

ADDRESSES: *Written comments.* Address comments to the Dockets Unit (DHM-30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Comments should identify the docket and notice number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Docket Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC. Public Dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday.

Public Hearing. The public hearing will be held at the Federal Aviation Administration's Auditorium, 3d Floor, 800 Independence Avenue, SW., Washington, DC 20591.

Any person wishing to present an oral statement at the public hearing should notify Thomas Allan, by telephone or in writing, by May 7, 1993. Each request must identify the speaker; organization represented, if any; daytime telephone number; and the anticipated length of the presentation, not to exceed 10 minutes. Written text of the oral statement should be presented to the hearing officer prior to the oral presentation. The hearing may conclude before 5 p.m. if all persons wishing to testify have been heard.

FOR FURTHER INFORMATION CONTACT: Thomas Allan, Deputy Director, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone (202) 366-8553.

SUPPLEMENTARY INFORMATION: On February 2, 1993, RSPA published an interim final rule in the Federal Register (58 FR 6864) amending the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to specify minimum standards for the safe transportation of oil and to require the preparation of plans for responding to discharges of oil. The rule also implements requirements of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990 (OPA-90). OPA-90 requires both response planning and prevention procedures for the discharges of oil. Based on the existing prevention requirements in the HMR and to address the OPA-90 mandate, RSPA amended the HMR to include previously unregulated oils (e.g., non-petroleum oils).

Several commenters have requested a public hearing to discuss the provisions of the interim final rule and an extension of the comment period, and this notice responds to their requests. A particular concern expressed in comments is the designation of previously unregulated oils, notably animal and vegetable oils with flash points at or above 200 degrees F., as hazardous materials.

Based on a preliminary review of public comments submitted to the docket, and related articles appearing in the media, RSPA believes that several requirements of the rule have been misunderstood. The areas of greatest misunderstanding relate to the transportation of oils which were previously unregulated. Those areas include: (1) General applicability of the rule to oil in bulk quantities; (2) placarding of transport vehicles; and (3) the need for a hazardous materials endorsement to a vehicle operator's commercial driver's license (CDL).

Paragraph (d) of § 173.155 (58 FR 6871) specifically excepts oil (other than hazardous wastes, hazardous substances, and marine pollutants) in non-bulk packagings from all requirements of the HMR. The term non-bulk packaging includes packagings having a maximum capacity of 450 liters (119 gallons) or less as a receptacle for a liquid. Thus, oil contained in drums, pails, bottles and other non-bulk packagings (not otherwise regulated as hazardous materials) is not classed as a hazardous material.

For domestic transportation, paragraph (f)(9) of § 172.504 excepts bulk packagings containing oil (Class 9) from the requirement to display the hazard warning placard. RSPA previously determined that the display of the identification number only on bulk packages adequately alerts emergency response personnel to the limited threat to health and property presented by Class 9 materials.

Section 383.93 of the Federal Motor Carrier Safety Regulations specifies requirements for a hazardous materials endorsement on a CDL. That requirement applies to operators of commercial motor vehicles which are required to be placarded for hazardous materials. As indicated above, bulk packagings (e.g., cargo tanks) containing oil (Class 9) are excepted from requirements for placarding during domestic transportation. Thus, the interim final rule has no new effect on the status of commercial vehicle operators.

Request for Comment

Affected persons are reminded that the preamble to the interim final rule requested comments on the following issues:

- Feasibility and workability of the rule (58 FR 6865).
- Whether any bulk packagings are used to transport oil in quantities exceeding 1,000 barrels (58 FR 6868).
- Whether any different or additional criteria should be used to determine which facilities should be required to file an extensive response plan (58 FR 6868).
- Effective date (February 2, 1995) of Federal preemptive effect of the rule (58 FR 6869).
- Estimated costs and benefits of the rule (58 FR 6869).
- Estimated burden hours and costs associated with the information collection requirements of the rule (58 FR 6869).

Issued in Washington, DC, on April 15, 1993, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93-9279 Filed 4-16-93; 12:19 pm]

BILLING CODE 4910-60-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 921230-3020]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notification of commercial quota harvest.

SUMMARY: NMFS issues this notification to announce that the summer flounder commercial quota available to the State of Maine for 1993 has been harvested. Vessels issued a Federal fisheries permit for the summer flounder fishery may no longer land summer flounder in the State of Maine for the remainder of calendar year 1993. Regulations governing the summer flounder fishery require publication of this notification to advise the State of Maine that its quota has been harvested and to advise vessel and dealer permit holders that no commercial quota is available for landing summer flounder in the State.

EFFECTIVE DATES: April 20, 1993, through December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Kathi Rodrigues, 508-281-9324.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 625 (December 4, 1992, 57 FR 57358). The regulations require annual specification of a commercial quota that is apportioned among the states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 625.20.

The commercial quota for summer flounder for the 1993 calendar year is set equal to 12.35 million pounds (5.6 million kg) (January 22, 1993, 58 FR 5658). The percent allocated to vessels landing summer flounder in Maine is 0.0482 percent or 5,956 pounds (2,702 kg).

Section 625.21(c) requires the Regional Director, Northeast Region (Regional Director) to monitor state commercial quotas based on dealer reports and other available information and to determine the date when a state commercial quota will be harvested. The Regional Director is further required to publish a notice in the Federal Register advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state.

The Regional Director has determined, based on dealer reports and other available information, that the Maine commercial quota will be harvested by April 20, 1993. The regulations at § 625.4(a)(3) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Director has determined no longer has commercial quota available. Therefore, further landings in that state by Federally permitted vessels are prohibited for the remainder of the 1993 calendar year, effective 0001 hours April 20, 1993. Federally permitted dealers are advised that they may not purchase summer flounder from Federally permitted vessels that land in Maine, for the remainder of the calendar year.

Classification

This action is required by 50 CFR part 625 and complies with Executive Order 12291.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: April 15, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-9186 Filed 4-15-93; 12:56 pm]

BILLING CODE 3510-22-M

50 CFR Part 663

[Docket No. 930345-3086]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule and notice of trip limit.

SUMMARY: The Secretary of Commerce (Secretary) announces a rule imposing management measures in the Pacific whiting fishery to minimize the bycatch of Pacific salmon. The rule is authorized under Amendment 7 to the Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations. It is necessary because many Pacific salmon stocks are at record low levels.

EFFECTIVE DATE: April 15, 1993.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) are available from the Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Suite 420, Portland, Oregon 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, Rodney R. McInnis at 310-980-4040, or the Pacific Fishery Management Council at 503-326-6352.

SUPPLEMENTARY INFORMATION: The Pacific Fishery Management Council (Council) developed Amendment 7 to the FMP to authorize the issuance of regulations imposing management measures on the groundfish fishery to conserve non-groundfish species. Amendment 7 was approved by the Secretary on March 26, 1993.

Amendment 7 states:

> Where conservation problems have been identified for [a] non-groundfish species and the best scientific information shows that the groundfish fishery has a direct impact on the ability of that species to maintain its long-term reproductive health, the Council may consider establishing management measures to control the impacts of groundfish fishing on [that] species. Management measures may be imposed on the groundfish fishery to reduce fishing mortality of a non-groundfish species for documented conservation reasons. The action will be designed to minimize disruption of the groundfish fishery, in so far as consistent with the goal to minimize the bycatch of non-groundfish species, and will not preclude achievement of a quota, harvest guideline, or allocation of groundfish, if any, unless such action is required by other applicable law.

At its November 1992 meeting, the Council determined that the potential bycatch of salmon in the Pacific whiting (whiting) fishery could have a direct impact on the ability of certain depressed salmon stocks (e.g., Klamath River fall chinook, Sacramento River winter chinook, Snake River fall chinook) to maintain their long-term reproductive health.

In response to these concerns, the Council recommended management measures at its November 1992 meeting to minimize the bycatch of salmon in the whiting fishery. A proposed rule to implement Amendment 7 was published on February 8, 1993 (58 FR 7525) and a proposed rule to impose the Council's recommended management measures was published on March 18, 1993 (58 FR 14549). No comments were received on either proposal. The regulations implementing Amendment 7, a necessary predicate to imposition of the actual management measures were announced in another Federal Register final rule notice.

This final rule imposes the same management measures as were proposed. Most of these management measures were imposed on the 1992 whiting fishery by an emergency rule

(57 FR 13661, April 17, 1992). The management measures imposed by this final rule are less restrictive than those imposed last year in three respects: (1) The prohibition against fishing for whiting at night applies only to the area south of 42° N. latitude, rather than coastwide as in 1992; (2) fishing under small trip limits may be allowed within the 100-fathom contour; and (3) between 40°30′ N – 42°00′ N. latitude, the "regular" whiting season starts earlier, March 1 instead of April 15, the start remains April 15 elsewhere off Washington, Oregon, and California. The requirement that vessels south of 42° N. latitude keep trawl doors on board the vessel and attached to the trawl at night (§ 663.23(b)(3)(v)) has been revised slightly from that proposed to clarify that it applies only to vessels used to fish for whiting. The other management measures announced in this rule, which are the same as those imposed in 1992, are: Closure of the Columbia River and Klamath River salmon conservation zones to the whiting fishery; a prohibition against processing whiting at sea south of 42° N. latitude; and, a prohibition against fishing for whiting inside of 100 fathoms in the Eureka subarea (40°30′ N – 43°00′ N. latitude), except for fishery under a small trip limit as described above. This trip limit is designated as "routine" at § 663.23(c), which means it may be adjusted after a single Council meeting and a single notice in the **Federal Register** if for the same purpose as originally intended. The initial trip limit also is announced in this **Federal Register** notice.

On March 10, 1993, NOAA published a proposed rule to govern the annual allocation of the yearly U.S. Pacific whiting harvest guideline or quota between vessels delivering to processors located on shore and other fishing vessels (58 FR 14543). That proposed rule, which also had a comment period ending April 1, included several prohibitions that are necessary for both the enforcement of the allocation rule and for the enforcement of the measures imposed by this rule. Because that rule may not be issued in final form until after April 15, the proposed prohibitions that are also necessary for this rule are being imposed by this rule. In addition, a prohibition has been added to help enforce the requirement to keep trawl doors on board and attached to the vessels trawls at night south of 42° N. latitude where night fishing by whiting vessels is prohibited. No comments were received on the prohibitions in the other proposed rule.

The purpose and rationale for these actions are discussed in the proposed rule for this action (58 FR 14549, March 18, 1993). Additional information appears in the whiting allocation proposed rule; the 1992 emergency rule to implement bycatch restrictions in the whiting fishery (57 FR 13661, April 17, 1992); the rule setting the coastwide April 15 starting date for the whiting "regular" season (57 FR 2851, January 24, 1992); and in the environmental assessments for these actions which are available from the Council (see ADDRESSES).

The Secretary concurs with the Council's recommendations, and promulgates the final rule and the amount of the trip limit for whiting taken and retained inside 100 fathoms in the Eureka subarea (which is designated as a "routine" trip limit in this final rule).

Notification of a trip limit

Effective on April 15, no more than 10,000 pounds of Pacific whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100-fathom contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka subarea (from 43°00′00″ N. latitude to 40°30′00″ N. latitude). All weights are round weights or round weight equivalents.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary for the conservation and management of the Pacific coast groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an Environmental Assessment and Regulatory Impact Review (EA/RIR) for this rule and the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this action. A copy of the EA/RIR is available from the Council (see ADDRESSES).

The Assistant Administrator determined that this is not a major rule requiring a regulatory impact analysis under Executive Order 12291.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, and August 28, 1992, regarding the impacts of the groundfish fisheries on the species being considered. The Assistant Administrator determined that current groundfish operations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or the U.S. Fish and Wildlife Service (under the Biological Opinion issued by the U.S. Fish and Wildlife Service dated July 3, 1989), or result in the destruction or adverse modification of critical habitat. This action falls within the scope of those Biological Opinions.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of the States of Washington, Oregon, and California. The determination was submitted for review by the responsible State agencies under section 307 of the *Coastal Zone Management Act*. The State of Washington concurred in this determination. The States of Oregon and California did not comment within the statutory time period.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Assistant Secretary under section 553(d)(3) of the Administrative Procedure Act finds that good cause exists to make this rule effective April 15, 1993, the starting date for most of the whiting fishery. Traditionally, fishing operations begin in the more southern waters of the fishery, generally in the Eureka subarea, where Sacramento winter run chinook salmon and Klamath River fall chinook salmon are more likely to be intercepted. The Biological Opinion conducted under the ESA (dated August 28, 1992) requires that fishing for whiting inside of 100 fathoms in the Eureka subarea be severely restricted. This rule imposes such restrictions. In addition, the at-sea processing component of the fishery is capable of harvesting the entire harvest guideline, or any allocation of the harvest guideline, within several weeks. Therefore, it is essential that these management measures to protect the salmon resource be imposed by April 15, 1993. Therefore, a delay in implementation until after April 15, 1993, is contrary to the public interest.

List of Subjects in 50 CFR 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 14, 1993.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 663 is amended as follows.

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 663.7, paragraphs (n) and (o) are added as follows:

§ 663.7 Prohibitions.

* * * * *

(n) Process Pacific whiting in the fishery management area during times or in areas where at-sea processing is prohibited.

(o) Take and retain, or receive (except as cargo), Pacific whiting on a vessel in the fishery management area that already possesses processed Pacific whiting on board, during times or in areas where at-sea processing is prohibited; when taking and retention is prohibited under § 663.23(b)(v), fail to keep the trawl doors on board the vessel and attached to the trawls on a vessel used to fish for whiting.

* * * * *

3. Section 663.23(b)(3) is revised to read as follows:

§ 663.23 Catch restrictions.

* * * * *

(b) * * *

(3) *Pacific whiting.*

(i) *Season.* The regular season for Pacific whiting begins on March 1 between 42°00′00″ N. and 40°30′00″ N. latitude, and on April 15 north of 42°00′00″ N. latitude and south of 40°30′00″ N. latitude. Before and after the regular season, trip landing or frequency limits may be imposed under paragraph (c) of this section.

(ii) *Closed areas.* Pacific whiting may not be taken and retained in the following portions of the fishery management area:

(A) *Klamath River Salmon Conservation Zone:* The ocean area surrounding the Klamath River mouth bounded on the north by 41°38′48″ N. latitude (approximately 6 nautical miles north of the Klamath River mouth), on the west by 124°23′00″ W. longitude (approximately 12 nautical miles from shore), and on the south by 41°26′48″ N. latitude (approximately 6 nautical miles south of the Klamath River mouth);

(B) *Columbia River Salmon Conservation Zone*: The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nautical miles due west from North Head along 46°18′00″ N. latitude to 124°13′18″ W. longitude, then southerly along a line of 167 True to 46°11′06″ N. latitude and 124°11′00″ W. longitude (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty;

(iii) *Eureka subarea trip limits.* Trip landing or frequency limits may be established, modified, or removed under 50 CFR 663.23(c)(1)(i)(I) specifying the amount of Pacific whiting that may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100-fathom contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka subarea (from 43°00′00″ N. latitude to 40°30′00″ N. latitude).

(iv) *At-sea processing.* Pacific whiting may not be processed at sea south of 42°00′00″ N. latitude (Oregon-California border).

(v) *Time of day.* Pacific whiting may not be taken and retained by any vessel in the fishery management area south of 42°00′00″ N. latitude between 0001 hours to one-half hour after official sunrise (local time). During this time south of 42°00′00″ latitude, trawl doors must be on board any vessel used to fish for whiting and the trawl must be attached to the trawl doors. Official sunrise is determined, to the nearest 5° latitude, in *The Nautical Almanac* issued annually by the Nautical Almanac Office, United States Naval Observatory, and available from the U.S. Government Printing Office.

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[FR Doc. 93-9133 Filed 4-14-93; 4:56 pm]
BILLING CODE 3510-22-M

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50 CFR Part 663

[Docket No. 930233-3074]

RIN 0648-AE93

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce issues this final rule to implement Amendment 7 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 7 authorizes the imposition of management measures on the Pacific Coast Groundfish Fishery to reduce the bycatch of salmon and other non-groundfish species. Under Amendment 7, regulations could be issued to reduce mortality of non-groundfish species when a conservation issue has been identified or in response to requirements of the Endangered Species Act (ESA) or other applicable law. It is intended for the groundfish fishery to share the burden of conservation of non-groundfish stocks where appropriate.

EFFECTIVE DATE: April 15, 1993.

ADDRESSES: Copies of the amendment, including the environmental assessment and regulatory impact review may be obtained from the Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201-5344.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140 (Northwest Region, NMFS), Rodney R. McInnis at 310-980-4040 (Southwest Region, NMFS), or Lawrence D. Six at 503-326-6352 (Pacific Fishery Management Council).

SUPPLEMENTARY INFORMATION: The domestic groundfish fishery in the Exclusive Economic Zone of the United States (3 to 200 miles offshore) in the Pacific Ocean off the coasts of California, Oregon, and Washington is managed under the FMP. Implementing regulations appear at 50 CFR part 663.

Amendment 7 to the FMP was prepared by the Pacific Fishery Management Council (Council) and submitted to the Secretary of Commerce (Secretary) for approval under the provisions of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson Act). A notice of availability and a proposed rule for Amendment 7 were published in the **Federal Register** on January 13, 1993 (58 FR 4146) and February 8, 1993 (58 FR 7525), respectively. The preamble for the proposed rule discussed the rationale for the proposed amendment. The comment period on Amendment 7 and the proposed rule closed March 22, 1993; no comments were received. Amendment 7 was approved on March 26, 1993.

As implemented by this final rule, Amendment 7 establishes the authority in the FMP to regulate groundfish fishing activities for the purposes of reducing the bycatch of non-groundfish species for identified conservation reasons or to meet the requirements of the ESA or other applicable law. Management measures could be applied to the entire groundfish fishery or any segment of the fishery.

Implementation of Amendment 7 requires changes to the regulatory language in the appendix to 50 CFR part 663. The only changes to the proposed regulations published on February 8, 1993, involve a revised numbering scheme for sections III.B.4.(a) through III.B.4.(c)(i), that will now read III.C.1 through III.C.3.(a), in addition to renumbering of the new section III. B.4.(d) that will now read III.C.4. The amendment does not impose any specific management measures. However, a regulatory amendment to implement management restrictions for the Pacific whiting fishery under this authority in 1993 and beyond was published as a proposed rule at 58 FR 14543 on March 18, 1993.

Classification

The Regional Director determined that the amendment is necessary for the conservation and management of the Pacific coast groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment for this amendment and the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the environmental assessment, which is incorporated in the Amendment 7 document, is available from the Council (see ADDRESSES).

The Assistant Administrator determined that this rule is not a major rule requiring a regulatory impact analysis under E.O. 12291. This determination is based on the regulatory impact review (RIR) prepared by the Council. A copy of the RIR, which is incorporated in the Amendment 7 document, is available from the Council (see ADDRESSES).

When this rule was proposed, the General Counsel of the Department of Commerce certified to the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

The Assistant Administrator determined that this rule must be effective no later than April 15, 1993, because it is necessary to authorize salmon bycatch restrictions contained in a pending regulatory amendment needed by April 15, when the Pacific whiting "regular" season is scheduled to open. If the fishery opens without the salmon bycatch restrictions, NMFS risks deviating from the conditions of the incidental take statement contained in an August 28, 1992, biological opinion on the groundfish fishery. Therefore, it is impractical and contrary to the public interest to delay for 30 days the effective date of this final rule, and the agency finds good cause to waive the delayed effectiveness provision (5 U.S.C. 553(d)(3)) of the Administrative Procedure Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of California, Oregon, and Washington. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. The state agencies either agreed with this determination or did not comment within the statutory time period.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

NMFS has issued biological opinions under the ESA on August 10, 1990, November 26, 1991, and August 28, 1992, regarding the impacts of the groundfish fisheries on the species being considered. The Assistant Administrator determined that current groundfish operations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. According to the biological opinion issued by USFWS dated July 3, 1989, the U.S. Fish and Wildlife Service determined that groundfish operations are not likely to jeopardize the continued existence of endangered or threatened species, under its jurisdiction, or result in the destruction or adverse modification of critical habitat. This action falls within the scope of those biological opinions.

The Regional Director determined that fishing activities conducted under this rule would have no adverse impacts on marine mammals.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 14, 1993.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 663 is amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. The Appendix is amended by revising the entries under III. in the index; by adding a heading for new paragraph III.C. after paragraph III.B.4. and before paragraph III.B.4.(a); by redesignating paragraphs III.B.4.(a) through III.B.4.(c) as paragraphs III.C.1. through III.C.3., respectively, and redesignating paragraph III.B.4.(c)(i) as paragraph III.C.3.(a); and by adding new paragraph III.C.(4) to read as follows:

Appendix to Part 663—Groundfish Management Procedures

Index

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III. * * *

C. Management Frameworks

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4. Management Measures to Protect Non-Groundfish Species

Where conservation problems have been identified for non-groundfish species and the best scientific information shows that the groundfish fishery has a direct impact on the ability of that species to maintain its long-term reproductive health, the Council may recommend management measures to control the impacts of groundfish fishing on those species. If approved by the Regional Director, management measures may be imposed on the groundfish fishery to reduce fishing mortality of a non-groundfish species. Such measures shall be designed to minimize disruption of the groundfish fishery, and may not preclude achievement of a quota, harvest guideline, or allocation of groundfish, if any, unless such action is required by other applicable law. Allocation may not be the primary intention of any such management measure.

Section 6.1 of the FMP lists nine principal measures that have been most useful in controlling fishing mortality: Mesh size, landing limits and trip frequency limits, quotas, escape panels or ports, size limits, bag limits, time/area closures, other forms of effort control, and allocation. While actions taken under this section III.C.4. are not limited to these measures, any of these measures may be employed to control fishing impacts on non-groundfish species when a conservation concern is clearly identified. The process for implementing and adjusting such measures may be initiated at any time. In addition, actions under this section III.C.4. may be designated as "routine" (see section III.C.1.).

Generally, the Council will initiate an action under this section III.C.4. when a state or Federal resource management agency or the Council's Salmon Technical Team (STT) presents the Council with information substantiating its concern for a particular species. The Council will review the information and refer it to the Scientific and Statistical Committee, GMT, STT, or other appropriate technical advisory group for evaluation. If the Council determines, based on this review, that management measures are necessary to prevent harm to a non-groundfish species facing conservation problems or to address requirements of the Endangered Species Act, Marine Mammal Protection Act, other relevant Federal natural resource law or policy, or international agreement, it may recommend appropriate management measures. If approved by the Regional Director, the measures will be implemented in accordance with the procedures identified in section III.B. The intention of the measures may be to share conservation burdens while minimizing disruption of the groundfish fishery, but under no circumstances may the intention be simply to provide more fish to a different user group or to achieve other allocation objectives.

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Appendix to Part 663 [Amended]

3. In the list below, for each Appendix section indicated in the left column, remove the reference indicated in the middle column from wherever it appears in the section, and add in its place the reference indicated in the right column:

Appendix	Remove	Add
II.C.5.	III.B.(c)	III.C.3.
II.E.	III.B.(b)	III.C.2.
II.I.(b)	III.B.(b)	III.C.2.
	III.B.(c)	III.C.3.
III.B.2.	III.B.(a)	III.C.1.
III.B.4. (second paragraph)	III.B.(b)	III.C.2.
(third paragraph)	III.B.(c)	III.C.3.
III.C.2. (former III.B.4. (b))	III.B.(c)	III.C.3.
III.C.2. (former III.B.4. (b))	III.B.(a)	III.C.1.
III.C.3. (former III.B.4. (c))	III.B.(a)	III.C.1.
III.C.3.(a) (former III.B.4.(c)(i)	III.B.(c)	III.C.3.

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50 CFR Part 663

[Docket No. 930229–3090]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (Secretary) issues a final rule allocating the 1993 U.S. Pacific whiting harvest guideline of 142,000 metric tons (mt) between fishing vessels delivering to processors located on shore and other fishing vessels. Under this rule, an initial allocation of 112,000 mt is available, until taken, to all fishing vessels regardless of where they deliver their catch. The remaining 30,000 mt is held in reserve for release to fishing vessels delivering to processors located on shore when the initial 112,000 mt allocation has been harvested. This action promotes the goals and objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by preventing preemption by at-sea processors of harvesting opportunities for fishing vessels that deliver their catch to shore facilities. This action will help stabilize the economic climate for both at-sea and shorebased operators during a period of transition to a limited access management program beginning in 1994.

EFFECTIVE DATES: April 15, 1993 through December 31, 1993.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) or the Final Regulatory Flexibility Analysis can be obtained from the Pacific Fishery Management Council, 2000 SW. First Avenue, suite 420, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 310–980–4030.

SUPPLEMENTARY INFORMATION: NMFS issues this final rule to implement part of a recommendation by the Pacific Fishery Management Council (Council) for a long-term framework to allocate the annual Pacific whiting harvest guideline or quota between the shoreside and at-sea industry sectors. The Council's recommendation is fully described in the notice of proposed rulemaking for this action (58 FR 14543, March 18, 1993).

The effect of the Council's entire recommendation would have been to provide an unjustifiably high level of economic protection at all future stock sizes to shoreside processing plants, the vessels that deliver whiting to shoreside plants, and the communities in which they are located, at the expense of the at-sea processing sector (catcher/processors or factory trawlers, motherships, catcher vessels that deliver to motherships, and the communities where employees reside).

The notice of proposed rulemaking sought public comment on whether the Secretary should: (a) Approve the Council's proposal in its entirety; (b) approve various parts of the proposal;

(c) disapprove the proposal; or (d) limit approval to 1 year.

This final rule reserves 30,000 mt of the 1993 Pacific whiting harvest guideline for fishing vessels that deliver to processors located on shore (shoreside processing sector). The remainder of the 1993 harvest guideline, 112,000 mt, is available to all fishing vessels, regardless of where they deliver their catch. The initial allocations operationally are different. The 30,000 mt reserve for the shoreside processing sector guarantees that amount of whiting for the shoreside processing sector in addition to that amount of the initial 112,000 mt taken by the shoreside sector, subject only to redistribution after September 1, 1993, if it becomes apparent that the shoreside sector will not use the full amount of the reserve. The 112,000 mt initial allocation to all fishing vessels operates as a theoretical initial limit on at-sea processing, but not as a guaranteed allocation since the onshore sector is expected to take a portion of it.

The effect of this action is to provide a level of economic protection from preemption by at-sea processors to the shoreside processing sector without effecting a dramatic change in the percentage of the harvest guideline that will be processed by each sector. Based on the most recent economic data, NOAA anticipates that the at-sea sector will process approximately 100,000 mt of the 142,000 mt Pacific whiting harvest guideline in 1993 (about 70 percent of the harvest guideline) and the shoreside sector will process the remaining 42,000 mt (about 30 percent of the harvest guideline).

Any Pacific whiting harvested or processed in state waters (0–3 nautical miles offshore) will be counted against the harvest guideline.

NMFS did not approve the Council's entire recommendation because the Council did not demonstrate that the extreme reallocation to the shoreside processing sector at the expense of the at-sea sector would provide sufficient social or economic net benefits to the Nation to justify the proposal.

NMFS agrees with the Council that some level of protection for the shoreside processing sector is necessary to prevent preemption of harvesting and processing opportunities for shoreside processors and the catcher vessels that deliver whiting to shoreside plants.

Discussion

NMFS' consideration of the Council's recommendation focused on the following:

1. Preemption of Shoreside Processing and Catcher Vessel Harvesting Opportunities by Domestic At-Sea Processors

The combined daily production rate of the at-sea fleet (factory trawlers, mothership-processors, and catcher boats that deliver to either or both) is estimated to be over nine times that of the shoreside sector of the industry. Unrestricted participation by the at-sea sector could result in harvest of the entire whiting harvest guideline in as few as 28 days. Such a fishery would concentrate the entire whiting harvest into the early part of the year, resulting in reduced revenues to coastal communities, and preemption of whiting processing opportunities for shoreside processors.

Preemption of the shore-based whiting fishery, if it were to occur, would result in the loss of revenues and income to coastal communities. This revenue source is important to maintain the viability of the seafood processing sector that purchases salmon, rockfish, flatfish, shrimp, crab and other species in addition to whiting, and supports the fishing-based portion of the coastal economy.

The likelihood that the at-sea harvesting and processing sector will preempt harvesting opportunity for catcher vessels that do not process will be reduced in 1994 when a license limitation program—a form of limited entry—will be implemented. Limited entry should preserve harvesting opportunities for such catcher vessels, many of which pioneered the fishery, for two reasons. First, few, if any, factory trawlers are expected initially to qualify for limited entry permits, which should result in catcher vessels that do not process having access to most of the annual whiting harvest guideline. Second, currently depressed surimi markets are likely to discourage factory trawlers from purchasing and combining several permits to allow them to harvest whiting until the market makes it economically profitable. Rather than purchase permits, some factory trawlers may operate as motherships and purchase fish from catcher vessels. As a result, limited entry should provide catcher vessels with the harvesting opportunities that the Council wishes to protect for them beginning in 1994, and it should not be necessary to restrict at-sea processing to achieve that same purpose. The coming license limitation program should provide market flexibility for catcher vessels. NMFS believes that a competitive market, where catcher vessels have a wider choice of markets, coupled with limited protection for the shoreline sector during the 1993 transition year, is in the long-term best interest of the fishing industry and the consumer.

2. Increased Allocation to the Shoreside Processing Sector at the Expense of the At-Sea Processing Sector

As illustrated in the table below, the Council's recommendation likely would have resulted in a major reallocation from the 1992 division of the harvest in 1993 and 1994 if harvest guidelines continue to decline.

1992 CATCH VERSUS 1993 AND 1994 ALLOCATIONS UNDER THE COUNCIL'S RECOMMENDATION

Year	Shoreside		At sea		Total metric tons
	Metric tons	Percent	Metric tons	Percent	
1992	56,000	27	153,000	73	209,000
1993	105,200	74	36,800	26	142,000
1994	80,000	80	20,000	20	100,000

NMFS economists prepared a cost/benefit analysis for the Council in order to determine whether the Council's recommendation would be a "major" rule under E.O. 12291 and to quantify, to the extent possible, net economic benefits to the Nation. These economists used data from various sources, including cost and production surveys for 1992. Information was collected on key variables including catch, ex-vessel prices, operating costs, product recovery rates, primary production (e.g., surimi), and secondary production (e.g., fish meal). Unfortunately, one key variable, the future price of whiting surimi, could not be determined. World surimi markets are in such a state of oversupply that little shoreside and at-sea whiting surimi had been sold at the time the analysis was conducted. Therefore, there were insufficient data to determine average shoreside and at-sea prices. As a result, at-sea and shoreside whiting surimi prices were assumed equal, as there was insufficient evidence to indicate otherwise. The cost information collected showed similar unit costs for both sectors. However, the cost/benefit results show a very small advantage for the alternative recommended by the Council, due to more efficient waste utilization by shoreside plants. But even these results, as noted by the Council's Scientific and Statistical Committee economists and NMFS economists, are clouded by the accuracy of input data, the inability to extrapolate long-run costs and benefits from data based on a single year of operation, and the inability to quantify the impacts of limited entry. Consequently, the cost/benefit analysis was not useful as a basis for major reallocation among user groups. This was one of the reasons that NMFS considered different options to the Council's proposed long-term formula for allocating whiting.

By the end of 1992, Japanese inventories of frozen surimi increased to a 10-year high of over 150,000 mt. Increased imports into Japan from relatively new sources of surimi (Russia, Thailand, China, Vietnam, Argentina, India and whiting surimi from the United States and Canada) also contributed to this inventory build-up. Consequently, surimi prices in Japan have fallen. Japanese import statistics for January 1993 indicate an average pollock surimi price of $1.10 per pound (lb)—a decline of over 50 percent from the January 1992 price of $2.24 per pound. Prices throughout 1993 are expected to continue to fall for several reasons. First, the pollock "A" season is expected to add 45 to 50 thousand tons of surimi to current supplies. Second, some at-sea processors are experiencing financial difficulties due to unexpected short-falls in the production of the highly-valued pollock roe, which could have offset lesser profits from low surimi prices. Financially distressed companies may sell product at distressed prices, which will contribute to prices staying low. Finally, fillet prices are expected either to maintain current levels or actually decline during 1993 as more companies emphasize fillet production over surimi and sell into world markets where Russian companies are reportedly selling low-priced pollock and cod products. As Pacific whiting surimi generally sells for 15–20 percent less than pollock surimi for the equivalent grade, all of these factors have implications for the 1993 whiting fishery.

The EA/RIR/IRFA indicated that at the maximum demonstrated operating capacity of the existing shoreside processing plants in 1992 of approximately 500 mt per day, the existing shoreside plants could process about 90,000–95,000 mt over a full season. This assumes that all plants operate at full capacity for the full season. That may or may not be realistic, depending upon the distribution of whiting and their availability to shoreside catcher boats, and depending upon market factors. The distressed state of the surimi market for 1993 described above provides questionable incentive to utilize the maximum capacity of either shoreside or at-sea processors, at least in the short term.

The Council's recommendation reflects its judgment that, at low stock sizes, greater social and economic benefits are derived from protecting and encouraging the growth and development of the whiting industry with its base in local coastal communities rather than allowing these benefits to flow to a mobile fleet based mainly in Seattle, WA. However, substantial evidence has been presented by the at-sea processing sector that its employee base is drawn from a wide spectrum of West Coast communities and that economic benefits flow to those communities as a result of at-sea processing trawler operations. Although the EA/RIR/IRFA shows that development of the onshore whiting sector would benefit coastal communities, it does not justify why that development should come at the expense of the at-sea sector.

The EA/RIR/IRFA did not substantiate the argument that the at-sea processing sector, because of its inherent mobility and ability to participate in other fisheries, should bear the entire cost of harvest reductions due to declining stock sizes. A review of alternative fishing opportunities for the at-sea processing sector indicates steady shrinkage of opportunity. Fishing opportunities and revenues for at-sea processors in the Alaskan groundfish fisheries have been steadily eroding due to overcapitalization, restrictive bycatch regulations, depressed surimi markets, and restrictive allocations. Opportunities for the at-sea processing sector to fish in Russian waters also appear to be uncertain.

NMFS believes that all sectors of the fishing community must equitably bear the burden of reduced catches due to reductions in the harvestable stocks. The Council's recommendation would result in the shoreside processing sector being allocated a much greater percentage share of the Pacific whiting resource at the expense of the at-sea processing sector, which has processed the majority of the resource during the past 2 years.

Based on the rationale explained above, NMFS has determined that the Council's recommendation to place 30,000 mt of the annual Pacific whiting harvest guideline in reserve for subsequent release to the shoreside processing sector should be approved; this will prevent preemption of shoreside processing opportunities by the at-sea processing sector. Conversely, NMFS has determined that, except for the September reapportionment of any portion of the reserve that will not be used by the shoreside sector by the end of the fishing year, the remainder of the Council's recommendation should be disapproved.

The following table shows the anticipated distribution of the 1993 harvest compared to the 1992 harvest, as a result of this final rule.

1992 CATCH VERSUS 1993 ANTICIPATED CATCH UNDER THIS RULE

Year	Shoreside		At sea		Total metric tons
	Metric tons	Percent	Metric tons	Percent	
1992	56,000	27	153,000	73	209,000
1993	42,000	30	100,000	70	142,000

Under the regulation, the percentage of the total allowable harvest expected to be taken by the shoreside sector is higher than its historical performance.

Comments and Responses

Comments From Shoreside Interests (Including Catcher Vessels That Deliver Shoreside)

Written comments favoring the Council's recommendation, either with or without the 30,000 mt shoreside reserve, were received from: 6 organizations (Oregon Trawl Commission, Midwater Trawlers Cooperative, Oregon Coastal Zone Management Association, Pacific Seafood Processors Association, Fishermen's Marketing Association, and Coast Draggers); 4 shoreside processing companies (Inland Quick Freeze, Point Adams Packing Co., Pacific Whiting Producers, and Castle Rock Seafoods, Inc.); 5 catcher vessel owners or operators, representing at least 11 vessels; 45 individuals employed by shoreside processing plants; 5 individuals working in support industries; the Oregon Department of Fish and Wildlife; and 3 U.S. Congressional Representatives for the State of Oregon. Four comments were flatly opposed to any change to the Council's recommendation. Eight preferred the Council's recommendation. The majority supported the Council's recommendation, but without the reserve. Outside the March 12–April 1 comment period on the notice of proposed rulemaking, NMFS received numerous other comments, including those from 2 U.S. Congressional Representatives (other than those referenced above), 4 U.S. Senators, and 1 Governor supporting the Council's recommendation, either with or without the reserve.

Comment 1: Four organizations supported the Council's recommendation. They emphasized the economic importance of promoting whiting harvesting and processing by vessels and in plants that are tied to local communities, the need to prevent pulse fishing, and the need to provide alternative harvesting opportunities to the traditional groundfish species for many vessels in the groundfish fleet.

Response: NMFS agrees that the development of new harvesting and processing opportunities for businesses based in local coastal communities is beneficial to those communities. However, if those benefits are at the expense of other U.S. businesses, then net economic or social benefits to the Nation must be demonstrated.

NMFS agrees that pulse fishing, under certain circumstances, can be detrimental to particular stocks. NMFS is not aware of any Council documents that suggest that a short, intense fishery on Pacific whiting would biologically damage the whiting stock or other groundfish species. For the last 2 years of joint venture operations (1989–1990), pulse fisheries occurred in which almost the entire harvest guideline for whiting was taken in about 11 weeks. Bycatch rates in these "pulse" joint ventures were lower for total rockfish than in each of the previous years, and were lower for salmon than in all but 2 of the previous years when the fishery was longer. Bycatch rates by the at-sea processing fleet of widow rockfish, yellowtail rockfish, and salmon in the spring 1992 pulse fishery (April 15–May 5) were lower than the average for the last 5 years of joint venture operations.

Nonetheless, NMFS also is concerned that short, intense, competitive fisheries for whiting could induce greater bycatch and wastage of both non-targeted groundfish and non-groundfish stocks, such as salmon. The Council and NMFS already have taken action to minimize bycatch in the whiting fishery by establishing April 15 as the start of the season for most of the whiting fishery and by amending the FMP (Amendment 7) to authorize restricting the groundfish fishery to protect non-groundfish species. A number of bycatch restrictions have been recommended by the Council and implemented by NMFS to address these concerns, among them: An April 15 start for the large-scale fishery north of 42° N. latitude and south of 40°30′ N. latitude; no at-sea processing of whiting south of 42° N. latitude; no fishing for whiting at night south of 42° N. latitude; no fishing in the Klamath River or Columbia River salmon conservation zones; and no fishing for whiting shoreward of the 100-fathom (183 m) contour in the Eureka area (except for a small trip limit). NMFS-certified observers have been carried on all at-sea processors, and an extensive observer program has been developed to monitor the short-based fleet. NMFS agrees that it can be difficult to monitor very short, intense fisheries, but with complete observer coverage, the track record has been good. Whiting fishermen, whether short or sea-based, agree that bycatch is not desirable. Rockfish, the most prevalent bycatch, have spines that destroy whiting flesh and make it unsuitable for processing. Neither fleet wants to be accused of contributing to the decline of salmon runs, and both sectors have kept their bycatch of salmon well below the Council recommended standard of 0.05 salmon per mt of whiting (one salmon in 20 mt of whiting). The same landing limits for non-whiting species apply to catcher vessels whether they land shoreside or at sea.

Comment 2: Whiting should be caught later in the year or throughout the year because yield is higher in the fall than in the spring. Processing whiting earlier in the year, which would occur if at-sea processors were given a large allocation with no provision to slow the fishery, could reduce gross revenues from the resource.

Response: NMFS scientists estimated the change in yield for an extreme example, assuming the entire harvest guideline was harvested in September. They estimated that the yield of whiting would increase by approximately 10 percent. However, this increase does not necessarily represent a 10 percent increase in marketable flesh. Moreover, the increase would be substantially less in a year-round fishery.

Beginning in 1994, the implementation of a license limitation program in the Pacific groundfish fishery should reduce the likelihood of a pulse fishery. This program also is expected to preserve substantial harvesting opportunities for whiting for traditional whiting catcher vessels, which should prevent effort shifts onto other groundfish species.

Comment 3: Many individual commenters argued that since at-sea processors were mobile, unlike shoreside plants, that they could make up losses in the whiting fishery from other fisheries.

Response: As described earlier, fishing opportunities and revenues for the at-sea processing sector have been steadily declining in recent years due to restrictive regulations, allocation decisions, overcapitalization, and soft markets. Few alternatives currently exist to those fisheries in which at-sea processors now participate.

Comment 4: Many individuals employed by shoreside plants wrote in support of the Council recommendation, and were grateful that they were employed as a result of the 1992 allocation. Most asked that the shoreside allocation not be lowered from 1992 levels, in order to preserve their jobs.

Response: NMFS deplores the loss of any jobs in the fishing industry, including those of crewmen and processing workers in the at-sea processing sector that would lose jobs if the Council's recommendation were approved. Creating jobs for shoreside workers at the expense of at-sea workers might be justified if a significant increase in net economic benefits to the Nation were shown. The EA/RIR/IRFA shows little difference in net benefits between production by either industry sector. The Council's recommendation would have provided substantially more whiting to shoreside processors in 1993 than was used in 1992. With a reduced amount of whiting available in 1993, and some loss of jobs inevitable, this final rule will not result in a disproportionate loss of jobs in either sector.

Comment 5: Many comments indicated that shoreside capacity is 95,000 mt or more, and an allocation of anything less will be disruptive, impeding already developed capacity.

Response: NMFS finds inadequate support in the EA/RIR/IRFA to justify protecting the shoreside sector at the expense of the at-sea sector, which also has developed capacity to use the Pacific whiting resource.

Comment 6: One shoreside commenter stated that the shoreside sector had not been, and was not likely to be, in danger of being over-capitalized because shoreside processing capacity is only at the level of catch in 1992 (about 56,000 mt).

Response: If this is the case, shore-based processing capacity will be accommodated appropriately by the final rule. This comment is in conflict with most shore-based testimony and with the EA/RIR/IRFA, which estimates current shoreside capacity to be as high as 90,000–95,000 mt.

Comment 7: Several commenters felt the reserve should be maintained, and that the purpose of the reserve was to spread the at-sea processing fishery into two seasons to minimize localized impacts of pulse fishing, and was not intended to supplement the shoreside allocation.

Response: In 1992, the Council recommended an April 15 start for most of the whiting fishery to mitigate the potential impacts the commenter fears. By starting the fishery when whiting are more fully dispersed along the coast, local impacts are intended to be less severe. The Council intended for the reserve to meet the needs of the shorebased processing sector. If the reserve was intended only to extend the at-sea processing season, there would have been no need to specify shoreside priority for the reserve.

Comment 8: The Council's recommendation should be adopted because it will divert local trawl effort to whiting rather than continue on other fully-exploited groundfish stocks. Preference to the shoreside sector will prevent overfishing of other groundfish species.

Response: Most groundfish species off Washington, Oregon, and California are already subject to severe landing restrictions that prevent overfishing. Effort in the entire fishery will be further reduced with implementation of a license limitation limited entry program in 1994. The allocation of whiting to one group or the other should not prevent any harvest guideline from being exceeded.

Comment 9: The at-sea fleet is overcapitalized, and was built for Alaska pollock fisheries. Therefore, the at-sea fleet should not take away whiting opportunities from coastal communities along the West Coast.

Response: The final rule is intended to preserve whiting opportunities for coastal communities by guaranteeing them a fair share of the harvest guideline for onshore processing.

Comment 10: Whiting should be reserved for citizens of the states adjacent to the resource.

Response: The Magnuson Fishery Conservation and Management Act (Magnuson Act) prohibits allocation that discriminates against the citizens of any state. Fish in the U.S. exclusive economic zone (EEZ) (3–200 nautical miles offshore) are the common property of all U.S. citizens, no matter where they live.

Comment 11: In response to concerns that the shoreside sector will need even less fish than in 1992, several shore-based representatives and U.S. Congressional Representatives from the State of Oregon assured NMFS that the shoreside sector would use the full allocated amount in 1993.

Response: NMFS acknowledges this comment.

Comment 12: Only the Council recommendation or the Council recommendation less the reserve would be fair. Omitting both the reserve and the sliding scale from the formula (Option 1 in the proposed rule) would provide 8 more fishing days for the at-sea sector (at 5,000 mt/day) at a cost of 60 days for shoreside processors (assuming 650 mt/day), and prorating the 1992 allocations (Option 2 in the proposed rule) would provide 3 days for at-sea processing at the cost of 23 days on shore.

Response: These comparisons reflect differences in daily processing capacity that are influenced by the number of processors in each sector. An individual catcher/processor can harvest about 150–400 mt per day. The highest-producing individual shore plants processed about 200 mt per day in 1992. The production rate by each sector does not provide information on dependence on whiting, employment, community benefits or other factors that may be relevant to allocation decisions.

Comment 13: The Council recommendation, without the reserve, is a reasonable compromise. If the allocation regime is applied to the harvest guideline (or quota) over the last 17 years, catches would be almost evenly split between the shoreside and at-sea processing sectors.

Response: NMFS acknowledges this comment, but notes that the EA/RIR/IRFA does not provide adequate justification for increasing shoreside production to half the harvest guideline.

Comment 14: According to the EA/RIR/IRFA, onshore processing has the potential to create extra income that is not available if fish are taken offshore. Furthermore, the Council's recommendation should be approved with the reserve because disapproval of the reserve would decrease the potential net benefit to the Nation by $19 million.

Response: The $19 million difference presented in the EA/RIR/IRFA is based on an expansion of minor differences over the long term (50–100 years). It is not an annual amount and is very speculative. In addition, the current amount of this difference is considerably less than in the EA/RIR/IRFA because the price of surimi has plummeted since the analysis was conducted. As noted by the Council's Scientific and Statistical Committee and NMFS economists, these results are clouded by the accuracy of input data, an inability to extrapolate long-run costs and benefits from data based on a single year of operation, and an inability to quantify the impacts of limited entry. Consequently, as explained in the preamble to this rule, the cost/benefit analysis is not useful as a basis for major reallocation among the user groups.

Comments From At-Sea Processing Interests (Including Catcher Vessels That Deliver to At-Sea Processors)

Written comments in opposition to the Council's recommendation with or without the reserve were received from: 3 organizations (The American Factory Trawlers Association, American High Seas Fisheries, the Grays Harbor Economic Development Council); 12 at-sea processing companies (Alaska Ocean Seafood, Premier Pacific Seafoods, Arctic Storm Inc., Emerald Resource Management (representing 5 companies), Arctic King Fisheries, Arctic Alaska Fisheries Corporation, Oceantrawl, Inc., and ProFish); 83 crew members employed by catcher/processors; and 1 interested individual. Outside the March 12–April 1 comment period on the notice of proposed rulemaking, NMFS received numerous other comments, including those from 8 U.S. Congressional Representatives and 2 U.S. Senators opposing the Council's recommendation, either with or without the reserve.

Comment 15: One commenter argued that the majority of the Pacific whiting harvest has always been processed at sea, beginning with the foreign fishery, followed by the joint venture fishery, and finally by U.S. at-sea catcher-processors and mothership processors.

Response: NMFS agrees that historically most whiting have been processed at sea. Only during the last 2–3 years has significant investment occurred to develop a shoreside processing industry. NMFS agrees with the Council that the fledgling shoreside processing industry needs some protection from total preemption by the at-sea fleet. Beyond a level of allocation that provides protection from preemption, however, NMFS is not convinced that further allocations to the shoreside sector at the expense of the at-sea sector are justified.

Comment 16: One commenter argued that NMFS should disapprove the Council's recommendation because the at-sea sector produces a superior product and is the only sector able to market surimi in foreign markets.

Response: Although both sectors make arguments for better, or at least equal, quality surimi, NMFS knows of no empirical evidence to support either side. Although differences may ultimately exist between sectors, apparently so little whiting surimi had been sold at the time the analysis was conducted, that little information is available from which to draw any conclusions. For this reason, the analysis in the EA/RIR/IRFA assumed identical prices for both sectors. NMFS also notes that quality is a market-driven factor, and that the industry will respond to the demands of its market. Shorebased whiting surimi has been exported successfully to foreign markets.

Comment 17: Two commenters recommended that the Secretary approve the Council's recommendation without the reserve and without the sliding scale (Option 1 in the proposed rule). They argued that this would provide a "fair share" to the shoreside sector equivalent to their highest historical production while reserving the largest share of the whiting harvest guideline for a competitive fishery with no restrictions on harvesting or processing. The commenters believed eliminating the reserve and sliding scale would provide the at-sea sector with an opportunity to access close to their recent historical share of the total catch.

Response: After carefully reviewing the Council's recommendation, the EA/RIR/IRFA, and the public comments, NMFS does not agree. Eliminating both the reserve and the sliding scale, but approving a 50,000 mt initial allocation to the shoreside sector, would provide protection to that sector approximately equivalent to the highest amount of whiting it has ever processed, but this would come at the direct expense of the at-sea sector. For the reasons stated previously, NMFS concluded that the allocation of a substantially greater percentage of the annual harvest guideline to the shoreside sector at the expense of the at-sea sector was not justified.

Comment 18: At-sea processing representatives commented that benefits from the Council's recommendation, with or without the reserve, will be concentrated in Newport, Oregon, and will not be dispersed along the coast or around the Pacific Northwest. They noted that Newport is relatively prosperous compared with other communities that would benefit from supporting the at-sea processing fleet. Shoreside proponents stated that the Council recommendation, with or without the reserve, should be approved because Newport traditionally has depended on whiting. Many of the traditional joint venture fishermen are homeported there, and this dependence also applies to support industries that are suffering due to declines in the timber industry and other fisheries.

Response: Most shorebased whiting production in 1991 and 1992 was centered in the Newport, OR, area. Much of the traditional joint venture catcher boat fleet was homeported in Newport, so it is not surprising that there is the most interest in shoreside processing in Newport. Most traditional shoreside processing of whiting has occurred in the Eureka/Crescent City area of northern California, but these plants have used less than 10,000 mt annually. The at-sea processing fleet is homeported predominantly in Seattle, WA, but the crew is from various locations. NMFS recognizes that it may be more difficult to find alternate employment in a small community than in a large, more diverse one, and that a small amount of fish can have a large impact on a small community. These factors contributed to NMFS' decision to approve the 30,000 mt reserve. The final rule is intended to preserve the balance of economic benefits between the two processing sectors in the face of declining harvest guidelines and a very uncertain world market for Pacific whiting products.

Comment 19: There is no need for a reserve or sliding scale that provide priority to the shore-based sector.

Response: NMFS disagrees. The reserve is included in the final rule, for the reasons stated. The sliding scale is not included because this action is intended to apply only to the 1993 fishery.

Comment 20: Several commenters felt there was no need to provide any shoreside preference at all—that competition should govern which sector gets the most whiting.

Response: The shorebased whiting processing industry has developed at least five-fold, from less than 10,000 mt to over 50,000 mt, between 1990 and 1992. However, the at-sea processing industry, which can operate as much as 10 times faster than the shorebased industry, has the capacity to take the entire harvest guideline. Lack of some level of shoreside protection will result in preemption of most of the existing shoreside opportunity to process whiting. For example, if the at-sea fleet operated at peak levels of almost 38,000 mt per week and the shorebased processors used about 3,500 per week, the harvest guideline would be reached in about 3 and one-half weeks in 1993. Such an Olympic fishery would provide about 11,500 mt shoreside, 20 percent of its 1992 production, whereas the at-sea processing sector would use about 133,000 mt, 87 percent of its 1992 production. The Council and NMFS try to phase in major changes, or announce them far in advance, to minimize disruption to the groundfish industry. Implementation of an Olympic system at this time, without the reserve, would cause severe and unexpected disruption of the existing shorebased industry. The final rule is expected to provide 100,000 mt for the at-sea fleet and 42,000 mt for the shoreside sector in 1993. Both of these amounts are less than each sector processed in 1992, but the percentage shares remain comparable to last year. By adopting the chosen option, NMFS intends to maximize stability and consistency for the communities dependent on both processing sectors.

Comment 21: Past allocations were based on false production estimates and should not be used as a basis for future allocations.

Response: In making allocation recommendations in the past, NMFS has considered testimony from processors, fishermen, economists, social scientists, and other interested individuals. Aware that market conditions are fluid and that plans change, NMFS has provided for a roll-over of the unneeded shoreside reserve allocation to be made available to at-sea processors, if necessary, to assure full utilization of the harvest guideline.

Comment 22: At-sea processing is more efficient and therefore should not be impeded.

Response: Economic efficiency is extremely difficult to define, especially given the paucity of current economic data. NMFS agrees that at-sea processors can process fish more rapidly than current shoreside processors, but that does not necessarily connote efficiency. Absent some shoreside allocation, it is likely that at-sea catcher/processors would preempt the shoreside processing sector.

Comment 23: Many commenters wished not to cause further disruption in the shoreside processing sector for whiting or other groundfish species, and made the point that the high-capacity at-sea processing fleet can virtually preempt the shorebased processing industry.

Response: NMFS shares this concern. See the response to comment 20. At its peak, at-sea processing exceeded 35,000 mt in a single week in 1992, whereas shorebased processing occurred at a peak of 3,500–4,000 mt per week. If whiting were not available, shoreside catcher vessels would harvest other species that already are fully utilized off Washington, Oregon, and California. Additional effort on those stocks could result in more restrictive landing limits on those species. On the other hand, use of those vessels in the whiting fishery could alleviate, or at least delay, implementation of more restrictive measures for other groundfish fisheries. NMFS notes that Objective 12 in the FMP is to implement the management measure "that best accomplishes the change with the least disruption of current domestic fishing practices, marketing procedures, and environment." NMFS has concluded that shoreside protection at a level provided by this rule is consistent with this objective in the FMP.

Comment 24: Any allocation should be to catcher vessels (those that process or those that do not), not to processors. Contrary to what has been stated by shoreside proponents, the Council recommendation, with or without a reserve, will not provide stability to coastal communities in the long term. Catcher vessels need a variety of markets for strong competition. The notice of proposed rulemaking does not acknowledge motherships as markets for catcher vessels from the local communities. The Council recommendation to allocate to at-sea processors (making no distinction between motherships and catcher/processors), would enable the more numerous catcher/processor fleet to preempt operations by catcher vessels delivering to motherships at sea. Any allocation for at-sea processing should be subdivided between catcher vessels that process and catcher vessels that do not, with no restriction on the place of landing, and continued for at least 1 year after implementation of the limited entry program.

Response: The license limitation program, which will begin on January 1, 1994, is intended to strengthen the harvesting sector by limiting effort in the fishery, thus providing a finite number of catcher vessels with a choice of viable processing markets. Although few catcher/processors will qualify for initial issuance of limited entry permits, they may enter the fishery by purchasing limited entry permits, or by obtaining "designated species B" permits for whiting. Motherships are not affected by the limited entry program and may receive fish for processing from any authorized catcher vessel. NMFS believes that this final rule best provides for the needs of the catcher fleet during 1993, pending implementation of the license limitation program in 1994.

Comment 25: Some at-sea processing representatives felt they should receive preference because they were required to have 75 percent U.S. crew, whereas shorebased plants were not similarly restricted and are not similarly staffed.

Response: NMFS acknowledges that this crew provision is a requirement of law that does not apply to the shorebased processors. However, vessel manning and labor/citizenship requirements are beyond the scope of the agency's jurisdiction under the Magnuson Act.

Comment 26: Some commenters felt that the shoreside industry was hiring a number of employees from outside the local community and that housing and social services in the Newport area were inadequate to accommodate these workers, many of whom are neither U.S. citizens nor English-speaking.

Response: See the response to comment 25. NMFS received no such complaints from citizens of Newport, OR, during the comment period.

Comment 27: Many commenters felt that the Council recommendation, with or without the reserve, was unfair because only the at-sea fleet would bear the brunt of the burden when whiting stock sizes were low.

Response: The whiting stock can be highly variable in annual abundance and availability. Under the final rule, the at-sea processing fleet and the shoreside processors would both bear the burden of reduced stock sizes.

Comment 28: Shorebased preference disadvantages the at-sea processing fleet that "Americanized" the joint venture (U.S.-caught/foreign processed) whiting fishery.

Response: "Americanization" of joint venture processing of whiting was intended by the Magnuson Act. However, traditional participation in a fishery is also a valid consideration. The shorebased fleet includes vessels that participated in the traditional joint venture fishery for whiting. They also participated in "Americanizing" the fishery, from foreign harvest to domestic harvest.

Comment 29: NMFS should be using the reserve for the benefit of shoreside processors, in the same way the reserve provided priority access for domestic processors when the foreign and joint venture fisheries for whiting operated.

Response: The Magnuson Act contains a "processor preference" provision, by which domestic processors receive priority access to the resource before foreign processing vessels. The Magnuson Act does not make any such distinction between types of U.S. processors. For Magnuson Act purposes, both the at-sea processing fleet and shore-based processing plants are types of domestic processors.

Comment 30: The Council's recommendation, with or without a reserve, would overcapitalize the shorebased processing industry.

Response: NMFS agrees that this could occur. However, the final rule implements only the 30,000 mt reserve, not the original Council recommendation.

Effective Date and Duration of the Rule

Comment 31: Almost all commenters asked NMFS to issue its allocation rule by April 15 to avoid confusion in the fishery.

Response: Comment noted.

Comment 32: Most shoreside commenters preferred a permanent allocation, to provide continuity and a long-term horizon on which to base their plans. Several asked that the allocation be for only 1–3 years, and that the issue be revisited after the limited entry fleet is better defined. Most at-sea commenters preferred no rule at all or disapproval of the reserve and sliding scale and reconsideration in 1–3 years after limited entry becomes effective.

Response: NMFS believes the public is best served by a 1-year allocation covering the 1993 fishery. Nothing precludes reconsidering the issue in 1994 after the license limitation program takes effect.

Classification

This final rule is published under authority of the Magnuson Act, 16 U.S.C. 1801 *et seq.* The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that it is necessary for management of the Pacific Coast groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an Environmental Assessment (EA) for this rule (contained in the EA/RIR/IRFA). Based on the EA, the Assistant Administrator determined that the whiting fishery as managed under this allocation will have no significant impact on the environment not analyzed in previous Environmental Impact Statements. You may obtain a copy of the EA from the Council (see ADDRESSES).

NMFS issued Biological Opinions under the ESA on August 10, 1990, November 26, 1991, and August 28, 1992, pertaining to the impacts of the groundfish fishery, and particularly the whiting fishery, on listed species. The opinions concluded that implementation of the FMP would not jeopardize the continued existence of any of the species considered. The rule, if implemented, would not result in biological impacts different from those discussed in the three Biological Opinions. Because the impacts of this action fall within the scope of the impacts considered in previous Biological Opinions, additional consultations are not required for this action.

The Assistant Administrator determined that this is not a major rule requiring a regulatory impact analysis under E.O. 12291. This action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises. A cost/benefit analysis prepared for this rule indicates that this action should result in an increase in net benefits from the status quo over the long term. The net effect of this rule will be to distribute the total revenues generated from the fishery between communities supported by the at-sea processors and those supported by shoreside processing plants and by U.S. fishing vessels that deliver to either at-sea processors or to shoreside plants.

The Assistant Administrator has determined that this rule could have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* An IRFA was prepared by the Council and is available from the Council (see ADDRESSES). A copy of this document was transmitted to the Small Business Administration. According to the IRFA, an average of 32 vessels per year landed whiting to shoreside processors during the 1986–90 period. In 1991, 14 catcher vessels made deliveries to at-sea processors. Those catcher vessels that are equipped to harvest whiting and transport it to shore will stand to benefit from this action compared to the status quo, while those equipped to deliver solely at sea may find their opportunities somewhat reduced. A Final Regulatory Flexibility Analysis (FRFA) was prepared (see ADDRESSES).

The Assistant Administrator finds good cause under section 553(d)(3) of the Administrative Procedure Act to make this rule effective upon filing at the Office of the Federal Register. If this rule is not effective on April 15, 1993, the date the whiting fishery regular season begins in 1993, or shortly thereafter, preemption of the shoreside processing sector by the at-sea sector would be a real possibility. Therefore, delaying the effective date of this rule is contrary to the public interest.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated April 15, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 663 is amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 663.2 is amended by adding, in alphabetical order, definitions of "at-sea processing", "processing" or "to process", and "shoreside processing" to read as follows:

§ 663.2 Definitions.

* * * * *

At-sea processing means processing that takes place on a vessel or other platform that floats and is capable of being moved from one location to another, whether shoreside or on the water.

* * * * *

Processing or *to process* means the preparation or packaging of groundfish to render it suitable for human consumption, industrial uses or long-term storage, including but not limited to cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done.

* * * * *

Shoreside processing means processing that takes place in a facility that is fixed permanently to land.

* * * * *

3. In § 663.23, paragraph (b)(4) is added to read as follows:

§ 663.23 Catch restrictions.

* * * * *

(b) * * *

(4) *Pacific whiting-allocation.*—(i) *Initial allocation.* Of the 142,000 mt 1993 Pacific whiting harvest guideline, 30,000 mt is reserved for harvest by vessels delivering to shoreside processors and the remainder, 112,000 mt, is designated as an initial limit on the amount of whiting that can be processed at sea, and is available to any fishing vessel operating in accordance with this part, without regard to the place of processing.

(ii) *Final allocation.* Any of the 30,000 mt reserved for harvest only by vessels delivering to shoreside processors shall be made available by the Regional Director for harvest by all fishing vessels regardless of where they deliver on September 1, 1993, or as soon as practicable thereafter, if the Regional Director determines that amount will not be used by shoreside processors by the end of that fishing year.

(iii) *Prohibition against at-sea processing.* If the Regional Director issues an announcement pursuant to paragraph (b)(4)(v) of this section, further at-sea processing of Pacific whiting is prohibited, and further taking and retaining, or receiving (except as cargo) of Pacific whiting by a vessel with processed whiting on board is prohibited. Such prohibition will be effective until additional Pacific whiting is determined to be available for at-sea processing, and an announcement has been issued under paragraph (b)(4)(v) of this section.

(iv) *Estimates.* Estimates of the amount of Pacific whiting processed will be based on actual amounts processed, projections of amounts that will be processed, or a combination of the two. Estimates of the amount of Pacific whiting that will be used by shoreside processors by the end of the fishing year will be based on the best information available to the Regional Director from state catch and landings data, the survey of domestic processing capacity and intent, testimony received at Council meetings, and/or other relevant information. Pacific whiting taken, retained, and processed in U.S. waters shoreward of the outer boundary of the fishery management area will count toward the limit on whiting available for at-sea processing.

(v) *Announcements.* The Assistant Administrator will announce in the **Federal Register** when 112,000 mt of whiting has been, or is about to be, harvested, specifying a time after which further at-sea processing of Pacific whiting in the fishery management area is prohibited. At that time, the Assistant Administrator will make the 30,000 mt reserve available to vessels delivering to shoreside processors. The Assistant Administrator will announce any reapportionment of the reserve in the **Federal Register** on September 1, 1993, or as soon as practicable thereafter. In order to prevent exceeding the limits or underutilizing the resource, adjustments may be made effective immediately by actual notice to fishermen and processors, by phone, fax, Northwest Region computerized bulletin board (contact 206–526–6128), letter, press release, and/or U.S. Coast Guard Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register**, in which instance public comment will be sought for a reasonable period of time thereafter. If insufficient time exists to consult with the Council, the Regional Director will inform the Council in writing of actions taken.

* * * * * * *

[FR Doc. 93–9208 Filed 4–15–93; 2:13 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 74
Tuesday, April 20, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-93-8]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received June 21, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. __________, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on April 13, 1993.

Donald P. Byrne,
Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No. 27105

Petitioner: Mr. Harry R. Smith

Regulations Affected: 14 CFR 65.93

Description of Rulechange Sought: To allow the holder of an inspection authorization (IA) to meet eligibility requirements for Inspection Authorization renewal, based on the performance of a combination of annual inspections, major repairs and major alterations, rather than fully meeting one of the requirements specified in § 65.93(a) (1) through (4).

Petitioner's Reason for the Request: The petitioner feels that a combination of annual inspections, major repairs, and major alterations is equal to, and possibly greater than, the qualification requirement alternative of attending eight hours of instruction, during the 12 month period preceding the application for renewal.

[FR Doc. 93-9173 Filed 4-19-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rules

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed Program Amendment Number 64 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations. The amendment concerns the definitions of "previously mined area" and "pre-existing discharge."

This document sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on May 20, 1993. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on May 17, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on May 5, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below.

Copies of the Ohio program, the proposed amendments, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H-3, Columbus, Ohio 43224, Telephone: (614) 265-6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1992, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1992, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

On January 8, 1993 (58 FR 3466), OSM revised its definition of the term "previously mined area" at 30 CFR 701.5. In response to this Federal rule change, the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment Number 64 by letter dated April 5, 1993 (Administrative Record No. OH–1857). In this amendment, Ohio proposes to revise the State definitions of the terms "previously mined area" and "pre-existing discharge" in two rules in the Ohio Administrative Code (OAC). The specific changes proposed by Ohio are discussed briefly below:

(1) *Previously Mined Area:* Ohio is revising OAC section 1501:13–1–02 paragraph (HHHH) to provide that the term "previously mined area" means land affected by coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of Chapter 1513, of the Ohio Revised Code, as effective September 1, 1981, and thereafter.

(2) *Pre-existing Discharge:* Ohio is revising OAC section 1501:13–4–15 paragraph (B)(5) to provide that the term "pre-existing discharge" means a discharge from surface or subsurface waters which is located on previously mined area as defined in rule 1501:13–1–02 of the OAC.

(3) *OAC section 1501:13–4–15 paragraphs (I)(2)(a) and (I)(3)(d):* Ohio is revising these paragraphs to delete two paragraph notations made obsolete by the reorganization of OAC section 1501:13–9–15 as proposed in Ohio's January 12, 1993, submission of Revised Program Amendment Number 56 (OH–1803).

III. Public Comment Procedures

In accordance with the provisions of the 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m. on May 5, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "ADDRESSES." A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the

Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 14, 1993.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 93-9193 Filed 4-19-93; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL 4615-5]

Open Meeting on Proposed Wood Furniture Rules and/or Control Techniques Guidelines

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: To forward EPA's ongoing effort to use Regulatory Negotiation to develop proposed rules regulating hazardous air pollutant emissions and/ or a Control Techniques Guideline covering volatile organic compound emissions associated with wood furniture manufacturing, we will hold a public meeting on May 4-5 to discuss data and possible regulatory approaches.

DATES: The meeting will take place on May 4-5. On May 4, it will start at 9 a.m. and end at 5 p.m. On May 5, it will start at 8 a.m. and end by 3 p.m.

ADDRESSES: The meeting will take place at the Velvet Cloak, 1505 Hillsborough Street, Raleigh, NC 27605, [919] 828-0333.

FOR FURTHER INFORMATION CONTACT: For additional information on substantive aspects of the meeting, please contact Madeline Strum of EPA's Office of Air Quality Planning and Standards, [919] 541-2383. For additional information on procedural or administrative matters please contact Susan Wildau or John Lingelbach, EPA's Co-convenors, at [303] 442-7367.

Dated: April 14, 1993.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 93-9195 Filed 4-19-93; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Ch. I

[FRL-4615-7]

Change In Meeting Location and Dates for the Disinfection By-Products Negotiated Rulemaking Advisory Committee Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Disinfection By-products Negotiated Rulemaking Advisory Committee's scheduled April 29-30 meeting to continue to develop consensus that can be used as the basis of a proposed rule, will now be held on May 12-13. The May meeting will be held at the Omni Georgetown, NOT at the Quality Hotel, the location of the now rescheduled April meeting. We apologize for any inconvenience.

DATES: The meeting will take place on May 12-13. On May 12, the meeting will start at 9:30 a.m. and run until completion. On May 13, it will start at 8:30 a.m. and run until completion.

ADDRESSES: The Committee will meet at the Omni Georgetown, 2121 P Street, NW., Washington, DC 20037, [202] 293-3100.

FOR FURTHER INFORMATION CONTACT: For further information on substantive aspects of the rule, call Stig Regli of EPA's Water Office at [202] 260-7379. For further information on the meeting, call Gail Bingham, the Committee Co-Chair, at (202) 293-4800.

Dated: April 16, 1993.

Chris Kirtz,

Director, Consensus and Dispute Program.

[FR Doc. 93-9290 Filed 4-19-93; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93-61; FCC No. 93-141]

Regulations for Automatic Vehicle Monitoring Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This docket proposes regulations for licensing Automatic Vehicle Monitoring (AVM) systems. AVM systems are used to locate and track vehicles and are currently licensed in accordance with interim rules adopted in 1974. This Notice is necessary to determine the most appropriate method of continuing to license these systems. The proposals contained in this Notice will provide for the continued development AVM services and will permit expanded use of location technology to include the location of any object.

DATES: Comments must be filed on or before June 29, 1993, and reply comments must be filed on or before July 14, 1993.

ADDRESSES: Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Sharkey, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, PR Docket No. 93-61, FCC No. 93-141, Adopted March 11, 1993, and released April 9, 1993. The full text of this Notice of Proposed Rule Making is available for inspection during normal business hours in the Records Room of the Federal Communications Commission, room 239, 1919 M St., NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M St., NW., suite 140, Washington, DC 20037, telephone (202) 857-3800.

Summary of Notice of Proposed Rule Making

1. This Notice of Proposed Rule Making proposes changes to enhance the use of the 902-928 MHz band for use by automatic vehicle monitoring (AVM) systems. Currently, AVM systems are used to locate and track vehicles and are licensed in accordance with interim rules adopted in 1974. In this Notice the Commission proposes to expand the service to include location of all objects, animate and inanimate, and to allow licensees to provide service on a private carrier basis to individuals, the Federal Government, and part 90 eligibles. The Commission also proposes to rename the AVM service as the location and monitoring service (LMS).

2. In the 902-928 MHz band the Commission proposes that wide-band and narrow-band systems not be licensed on the same spectrum. The Commission proposes that wide-band LMS systems be licensed on the 904-912 and 918-926 MHz bands and that the narrow-band systems be licensed on the 902-904, 912-918, and 926-928 MHz bands. The Commission proposes that all licensing be on a non-exclusive basis but requests comment on the feasibility of non-exclusive licensing. This summary of proposed rule changes may not be all inclusive. Parties interested in a complete description of

proposed changes should consult the full text of the Further Notice of Proposed Rule Making available in the FCC Dockets Center or for purchase from ITS, Inc. as described above.

Initial Regulatory Flexibility Analysis

3. *Reason for action:* The changes, proposed herein, to part 90 of the Commission's Rules will enhance use of the 902–928 MHz band for automatic vehicle monitoring (AVM) systems. The proposed permanent rules will replace the existing interim rules, thereby creating a more stable environment for AVM systems to operate in. This should lead to investment in AVM technology a development and implementation of new AVM systems.

4. *Objectives:* The Commission seeks to promote development of a competitive and innovative AVM service in the 902–928 MHz band. Such a service will provide valuable new advanced location options to the public.

5. *Legal basis:* The legal basis for these rule changes is found in sections 4(i), 302, 303(g), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(g), 303(r), and 332(a).

6. *Reporting, recordkeeping, and other compliance requirements:* AVM licensees will be required to have equipment type accepted prior to its use. Additionally, some licensees currently operating AVM systems in the 904–912 and 918–926 MHz bands will be required to relicense their systems in the 902–904, 912–918, or 926–928 MHz bands.

7. *Federal rules which overlap, duplicate or conflict with these rules:* None.

8. *Description, potential impact, and number of small entities involved:* Many small entities could be positively affected by this proposal because additional AVM options would be made available to them. The number of small entities that will be affected is unknown. Additionally, expanded service opportunities will generate a demand for new AVM equipment, a benefit for equipment manufacturers.

9. *Any significant alternatives minimizing the impact on small entities consistent with the stated objectives:* This Further Notice solicits comments on a variety of alternatives. Additionally, all significant alternatives presented in response to the petition for rule making have been addressed in this Notice of Proposed Rule Making.

Paperwork Reduction

This proposal has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, disclosure or record retention requirements and will not increase the burden hours imposed on the public.

List of Subjects in 47 CFR Part 90

Business and industry, Communications equipment, Radio.

Federal Communications Commission

Donna R. Searcy,

Secretary.

[FR Doc. 93–9126 Filed 4–19–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. 91–53; Notice 3]

RIN 2127–AE87

Insurer Reporting Requirements; List of Insurers Required to File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: Title VI of the Motor Vehicle Information and Cost Savings Act requires certain passenger motor vehicle insurers to file reports with NHTSA, unless the agency exempts the insurer from filing such reports. The law stipulates that NHTSA can only exempt those insurance companies whose market share is below certain percentages for the nation as a whole and in each individual State, or for which NHTSA determines that: (1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and (2) the insurer's report will not significantly contribute to carrying out the purposes of title VI.

To carry out these statutory provisions, the agency has thus far exempted all those insurance companies that are lawfully eligible to be exempted and publishes a list of those companies subject to the reporting requirements. Appendix A includes a list of issuers of motor vehicle policies subject to the reporting requirements in each state in which they do business. Appendix B includes a list of issuers of motor vehicle insurance policies subject to the reporting requirements only in designated states. Appendix C includes a list of motor vehicle rental and leasing companies (including licensees and franchisees) subject to the reporting requirements of part 544.

An insurance company's eligibility for exemption from the reporting requirements may vary annually, as its national and State-by-State market shares change, or the size of its motor vehicle fleet changes. To address this situation, NHTSA has stated that it will publish annual updates of the list of insurance companies that are required to file annual reports. Using a procedure begun in 1992, this notice proposes to update the list of companies subject to the reporting requirements, to reflect changing market conditions. If these listings are adopted as a final rule, those insurance companies included on any list would be required to file reports for the 1991 calendar year not later than October 25, 1993. Any insurance company not on any of the final lists would not be required to file a report for the 1991 calendar year

DATES: Comments on this proposed rule must be received by this agency not later than June 4, 1993. If this rule is made final, companies listed on the appendices would be required to submit reports beginning with the one due October 25, 1993.

ADDRESSES: Comments on this proposed rule must refer to the docket number referenced in the heading of this notice, and be submitted to: Docket Section, NHTSA, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION:

Background

Section 615 of the Motor Vehicle Information and Cost Savings Act (the Act) (15 U.S.C. 2032) requires certain passenger motor vehicle insurers to file an annual report with NHTSA unless the agency exempts the insurer from filing such reports. The reports include information about thefts and recoveries of motor vehicles, the rating rules used by the insurers to establish premiums for comprehensive coverage, the actions taken by insurers to reduce such premiums, and the actions taken by insurers to reduce or deter theft. Under the Act, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for one percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one State; (3) rental or leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity. As discussed in the following sections, the agency may, by regulation, exempt certain insurers from the reporting requirements.

A. Insurers of Passenger Motor Vehicles

Although issuers of motor vehicle insurance policies are subject to reporting requirements, section 615(a)(5) provides that the agency shall exempt small insurers from the reporting requirements if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information collected and compiled in the reports, either nationally or on a State-by-State basis. The term "small insurer" is defined in section 615(a)(5)(C) as an insurer whose premiums account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, the company must report the required information about its operations in that State.

As described in the final rule establishing the requirement for insurer reports (52 FR 59, January 2, 1987), appendix A lists companies which must report based on the fact that each insurer had at least one percent of the national market for motor vehicle insurance premiums, and appendix B lists those insurers that are required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. In the January 2, 1987 notice, the agency stated that these appendices will be updated annually. It has been NHTSA's practice to update the appendices based on data voluntarily provided by insurance companies to A. M. Best, and made available to the agency each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition to companies that issue insurance policies, the term "insurers" is defined in section 615 of the Act to include certain self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles. (Section 615(a)(3)). Section 615(a)(4) of the Act authorizes the agency to exempt an insurer from submitting the reports, if the agency determines that:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer, and

(2) The insurer's report will not significantly contribute to carrying out the purposes of title IV.

In a final rule published June 22, 1990 (55 FR 25606), the agency in effect granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles. The agency issued this exemption because it believed that reports from the largest rental and leasing companies would provide the agency with a sufficiently representative sampling of the theft experience of rental and leasing companies. NHTSA concluded that reports by the many smaller rental and leasing companies do not significantly contribute to carrying out title VI, and that exempting such companies will relieve an unnecessary burden on the vast majority of the companies potentially subject to the reporting requirements. As a result of the June 1990 final rule, the agency added a new appendix C, which consists of an annually updated listing of the rental and leasing companies that are subject to the reporting requirements in part 544. It has been NHTSA's practice to update appendix C based primarily on information contained in the publications Automotive Fleet Magazine and Travel Business Travel News.

June 4, 1992 Final Rule

On June 4, 1992, NHTSA published a final rule updating the list of insurers required to file reports, based on the most recent information. (See 57 FR 23535.) In that final rule, the agency also adopted a new procedure that the agency believed would let insurers know well in advance of the annual October 25 filing date whether they need to file a report for the previous calendar year.

In the past, it was the agency's practice to attempt to update appendices A, B and C each year prior to the October 25 filing date, using A. M. Best and other data obtained in the spring of that same calendar year. However, the agency was generally unable to complete the updating before the October 25 filing date, resulting in confusion concerning which companies needed to file reports.

With the adoption of the new procedure in the June 1992 final rule, NHTSA stated that it believed that this problem would be resolved by increasing the interval between the receipt of data and the reporting date. Under the new approach, the updating of the appendices would focus on the report due the year after receipt of the A. M. Best and other data, both for companies which are added to the lists and companies which are removed from the lists. The agency stated that, under this approach, all companies added to the lists as of the March 1991 final rule should file the required report by October 25, 1991, and all companies added to the lists based on the June 4, 1992 final rule, would be provided ample notice concerning whether they need to file a report by October 25, 1992.

The agency further noted that part 544 would not need to be changed to implement this approach. Part 544 generally does not limit its requirements to particular years. Under part 544, any company not listed has an indefinite exemption from the reporting requirements, and as long as any company is listed, it must file reports each October 25. Thus, any company listed in the appendices as of the date of the most recent final rule (June 4, 1992) must file a report on October 25, 1992, and on each succeeding October 25, absent a further amendment.

Notice of Proposed Rulemaking

1. Insurers of Passenger Motor Vehicles

Based on the 1991 calendar year A. M. Best data for market shares, NHTSA proposes that appendix A be changed so that it differs slightly form the June 4, 1992 listing. Appendix A lists companies which must report based on the fact that each insurer had at least one percent of the national market for motor vehicle insurance premiums. One company, Hanover Insurance Companies, that was included in appendix A in the June 1992 listing, is proposed to be removed from appendix A. Two companies, Motors Insurance Group, and Zurich Insurance Group, that were not previously listed in appendix A, are proposed to be added. In addition, a company that was previously included in appendix A as Hartford Insurance Group, is now known as ITT Hartford Insurance Group. This proposed rule reflects this name change.

It is proposed that each of the 19 companies listed in appendix A in this notice be required to file a report not later than October 25, 1993, setting forth the information required by part 544 for each State in which it did business in the 1991 calendar year.

Appendix B lists those insurers that would be required to report for particular States for calendar year 1991, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 1991 calendar year A.M. Best data for market shares, it is proposed that appendix B, be amended slightly. One company, Indiana Farm Bureau Group, reporting on its activities in the State of Indiana is proposed to be removed from appendix B. In addition, it is proposed that two additional companies, be added to appendix B: Arbella Mutual Insurance, would be required to report on its activities in the State of Massachusetts; and Commerce Group, Inc., would be required to report on its activities in the State of Massachusetts.

Accordingly, it is proposed that, for calendar year 1991, each of the eleven insurers listed in appendix B, report on their activities in every State in which they had a 10 percent or greater market share, pursuant to section 615 of the Cost Savings Act. These reports must be filed no later than October 25, 1993, and set forth the information required by part 544.

2. Rental and Leasing Companies

Based on information in Automotive Fleet Magazine and Travel Trade Business Travel News for 1991, the most recent year for which data are available, NHTSA is proposing several changes in appendix C. As indicated above, that appendix lists rental and leasing companies required to file reports. Based on the above mentioned publications, it is proposed that the following rental and leasing company be removed from appendix C: Rental Concepts, Inc.

NHTSA received a letter from an additional rental and leasing company listed in appendix C, Wheels, Inc., after the June 1992 final rule was published in the **Federal Register**. In its letter, Wheels, Inc. requested that it be exempted from appendix C. As a rationale for its removal, Wheels, Inc., stated that although it leases 130,000 vehicles, it self-insures only approximately 4,500 vehicles. Wheels, Inc., stated that the other leased vehicles are insured by the lessee. Because Wheels, Inc., self-insures fewer than 50,000 vehicles in its leased fleet, it does not meet one of the criteria the agency uses to determine that an insurer is included in appendix C. Since Wheels, Inc. does not meet one of the criteria, the agency agrees that Wheels, Inc. should be removed from appendix C. In this notice, the agency proposes that Wheels, Inc., be removed from appendix C.

Accordingly, it is proposed that for calendar year 1991, each of the 18 companies (including franchisees and licensees) listed in this notice in appendix C, file reports no later than October 25, 1993, and set forth the information required by part 544.

This proposed rule does not have any retroactive effect, and it does not preempt any State law. Section 613 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2030, provides that judicial review of this rule may be obtained pursuant to section 504 of the Cost Savings Act, 15 U.S.C. 2004. The Cost Savings Act does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this proposed rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This proposed rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. On the other hand, those companies that are not statutorily eligible for an exemption are expressly required to file reports.

NHTSA does not believe that this proposed rule, reflecting more current data, affects the impacts described in the final regulatory evaluation prepared for 49 CFR part 544. Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the cost estimates in the final regulatory evaluation for part 544, the agency estimates that the cost of compliance will be about $50,000 for any company that is added to appendix A, about $20,000 for any company added to appendix B, and about $5,770 for any company added to appendix C. If this proposed rule is made final, for appendix A, the agency removes one company and adds two companies; for appendix B, the agency removes one company, and adds two companies; and for appendix C, the agency removes two companies and adds four companies. The agency therefore estimates that the net effect of this proposal, if made final, will be a cost increase to insurers, as a group, of approximately $81,540.

As noted above, a full regulatory evaluation was prepared for the final rule establishing 49 CFR part 544. Interested persons may wish to examine that evaluation in connection with this proposal. Copies of that evaluation have been placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling at (202) 366–4949.

2. Paperwork Reduction Act

The information collection requirements in this rule have been submitted to and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) This collection of information has been assigned OMB Control Number 2127–0547 ("Insurer Reporting Requirements") and has been approved for use through October 31, 1993.

3. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed to be included on appendices A, B, or C would be construed to be a small entity within the definition of the RFA. Section 615(a)(5)(C) of the Theft Act defines "small insurer" in part as any insurer whose premiums for motor vehicle insurance account for less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all "self insured rental and leasing companies" that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this proposed rule and determined that it will not have a significant impact on the quality of the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies of the comments be submitted. All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. (49 CFR part 512).

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is proposed to be amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 would continue to read as follows:

Authority: 15 U.S.C. 2032; delegation of authority at 49 CFR 1.50.

2. Appendix A to part 544 would be revised to read as follows:

Appendix A to Part 544—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Aetna Life & Casualty Group
Allstate Insurance Group
American Family Group
American International Group
California State Auto Association
CNA Insurance Companies
Farmers Insurance Group
Geico Corporation Group
ITT Hartford Insurance Group
Liberty Mutual Group
Motors Insurance Group [1]
Nationwide Group
Progressive Group
Prudential of America Group
State Farm Group
Travelers Insurance Group
United States F & G Group
USAA Group
Zurich Insurance Group [1]

[1] Indicates a newly listed company which must file a report beginning with the report due October 25, 1993.

3. Appendix B to part 544 would be revised to read as follows:

Appendix B to Part 544—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Amica Mutual Insurance Company (Rhode Island)
Arbella Mutual Insurance (Massachusetts) [1]
Auto Club of Michigan Group (Michigan)
Commerce Group, Inc. (Massachusetts) [1]
Commercial Union Insurance Companies (Maine)
Concord Group Insurance Companies (Vermont)
Erie Insurance Group (Pennsylvania)
Kentucky Farm Bureau Group (Kentucky)
Southern Farm Bureau Casualty Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

[1] Indicates a newly listed company which must file a report beginning with the report due October 25, 1993.

4. Appendix C to part 544 would be revised to read as follows:

Appendix C to Part 544—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
American International Rent-A-Car Corp./ANSA
ARI, Inc. [1]
Associates Leasing, Inc.
Avis, Inc.
Budget Rent-A-Car Corporation
Dollar Rent-A-Car Systems, Inc.
Enterprise Rent-A-Car [1]
GE Capital Fleet Services
Hertz Rent-A-Car Division (subsidiary of Hertz Corporation)
LMV Leasing, Inc. [1]
McCullagh Leasing, Inc.
National Car Rental System, Inc.
Penske Truck Leasing Company
PHH Fleet America
Ryder Truck Rental, Inc. (both rental and leasing operations)
U-Haul International, Inc. (subsidiary of AMERCO)
U. S. Fleet Leasing [1]

[1] Indicates a newly listed company which must file a report beginning with the report due October 25, 1993.

Issued on: April 14, 1993.

Barry Felrice,
Associate Administrator for Rulemaking.

[FR Doc. 93-9090 Filed 4-19-93; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 58, No. 74
Tuesday, April 20, 1993

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Arshad Z. Pervez; Order Denying Permission To Apply for or Use Export Licenses

In the matter of: Arshad Z. Pervez, 1007–75 Havenbrook Boulevard, Willowdale, Ontario, Canada.

On April 4, 1990, Arshad Z. Pervez (hereinafter referred to as Pervez) was convicted in the U.S. District Court for the Eastern District of Pennsylvania of violating the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991, Supp. 1992, and Pub. L. 103–10, March 27, 1993)) (EAA). The conviction followed a plea of nolo contendere to one count of a multiple-count criminal indictment charging Pervez, *inter alia*, with attempting to export from the United States to Pakistan United States-origin miraging steel without the validated export license required by the Export Administration Regulations. Section 11(h) of the EAA provides that, at the discretion of the Secretary of Commerce,[1] no person convicted of violating the EAA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1992)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the EAA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Pervez's conviction for violating the EAA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Pervez permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on April 4, 2000. I have also decided to revoke all export licenses issued pursuant to the EAA in which Pervez had an interest at the time of his conviction.

Accordingly, it is hereby

Ordered

I. All outstanding individual validated licenses in which Pervez appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Pervez's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until April 4, 2000, Arshad Z. Pervez, 1007–75 Havenbrook, Boulevard, Willowdale, Ontario, Canada, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity:

(i) As a party or as a representative of a party to any export license application submitted to the Department;

(ii) In preparing or filing with the Department any report license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining from the Department or using any validated or general export license, reexport authorization or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and

(v) In financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Pervez by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity:

(i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate:

(a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest

[1] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until April 4, 2000.

VI. A copy of this Order shall be delivered to Pervez. This Order shall be published in the **Federal Register**.

Dated: April 12, 1993.

Eileen Albanese,

Acting Director, Office of Export Licensing.

[FR Doc. 93-9119 Filed 4-19-93; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Pennsylvania State University, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92-143. *Applicant:* Pennsylvania State University, University Park, PA 16802. *Instrument:* Cold Sample Stage for Time-of-Flight SIMS. *Manufacturer:* Kore Technology Ltd., United Kingdom. *Intended Use:* See notice at 57 FR 49456, November 2, 1992. *Advice Received From:* National Institutes of Health, February 9, 1993.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an instrument previously imported for the use of the applicant.

The accessory is pertinent to the intended uses and we know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93-9218 Filed 4-19-93; 8:45 am]

BILLING CODE 3510-DS-F

Rutgers University, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92-160. *Applicant:* Rutgers University, New Brunswick, NJ 08903. *Instrument:* Inshore Minicorer. *Manufacturer:* Bowers & Connelly Precision Engineers, United Kingdom. *Intended Use:* See notice at 57 FR 54972, November 23, 1992.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides four undisturbed sediment cores per deployment and can be handled aboard a small research vessel. A private research institution advised January 7, 1993, that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93-9221 Filed 4-19-93; 8:45 am]

BILLING CODE 3510-DS-F

Texas A&M Research Foundation, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92-135. *Applicant:* Texas A&M Research Foundation, College Station, TX 77843. *Instrument:* Multi-Sensor Core Logger. *Manufacturer:* GEOTEK, United Kingdom. *Intended Use:* See notice at 57 FR 48598, October 27, 1992.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides high precision measurements of: (1) Compressional (p-wave) velocities, (2) gamma ray attenuation and (3) magnetic susceptibility with data format compatibility and other core drilling research programs. A private research institution advised December 1, 1992, that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93-9216 Filed 4-19-93; 8:45 am]

BILLING CODE 3510-DS-F

University of California, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92-144. *Applicant:* University of California, Los Alamos, NM 87545. *Instrument:* Surface Layer Scintillator, Model SLS 20. *Manufacturer:* Scintec Atmospharenmesstechnik, Germany. *Intended Use:* See notice at 57 FR 49456, November 2, 1992. *Advice Received From:* National Oceanic and Atmospheric Administration, December 4, 1992.

Comments: No comments have been received with respect to this application. *Decision:* Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered March 16, 1992. *Reasons:* The foreign instrument provides precise spatially-averaged wind and heat flux measurements over various terrains using displacement of the scintillation pattern across the beam of a scintillometer. The National Oceanic and Atmospheric Administration advises that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use which was being manufactured in the United States at the time the foreign instrument was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which was being manufactured in the United States at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93-9217 Filed 4-19-93; 8:45 am]

BILLING CODE 3510-DS-F

University of California, Davis; Notice of Decision on Application for Duty-free Entry of Scientific Instrument

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

DECISION: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

REASONS: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 92-117. *Applicant:* University of California, Davis, Davis, CA 95616. *Instrument:* Electrophoresis Apparatus for Solid Particles in Suspension, Model MKII. *Manufacturer:* Rank Brothers, United Kingdom. *Date of Denial without Prejudice to Resubmission:* January 21, 1993.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93-9222 Filed 4-19-93; 8:45 am]

BILLING CODE 3510-DS-F

University of Colorado, Boulder, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92-158. *Applicant:* University of Colorado, Boulder, Institute of Arctic and Alpine Research, Boulder, CO 80309-0450. *Instrument:* Isocarb Automatic Carbonate Preparation System, Model PS/004. *Manufacturer:* VG Isotech, United Kindgdom. *Intended Use:* See notice at 57 FR 54972, November 23, 1992.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an instrument previously imported for the use of the applicant.

The accessory is pertinent to the intended uses and we know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93-9219 Filed 4-19-93; 8:45 am]

BILLING CODE 3510-DS-F

Yale University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92-154. *Applicant:* Yale University, New Haven, CT 06510. *Instrument:* Electron Microscope, Model JEM-1010. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 57 FR 54972, November 23, 1992. *Order Date:* August 21, 1992.

Docket Number: 92-166. *Applicant:* National Institute of Arthritis and Musculoskeletal and Skin Diseases, NIH, Bethesda, MD 20892. *Instrument:* Electron Microscope, Model CM20-FEG. *Manufacturer:* Philips Electronic Instruments, The Netherlands. *Intended Use:* See notice at 58 FR 4978, January 19, 1993. *Order Date:* January 10, 1992.

Docket Number: 92-174. *Applicant:* Children's Hospital and Medical Center, Seattle, WA 98105. *Instrument:* Electron Microscope, Model EM 910. *Manufacturer:* Carl Zeiss, Germany. *Intended Use:* See notice at 58 FR 4977, January 19, 1993. *Order Date:* August 3, 1992.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93-9220 Filed 4-19-93; 8:45 am]

BILLING CODE 3510-DS-F

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Red Drum Advisory Panel (Panel) on April 26, 1993. The meeting will be held from 9:30 a.m. until 4 p.m., at the New Orleans Airport Hilton and Conference Center, 901 Airline Highway, Kenner, LA; telephone: (504) 469-5000.

The Panel will meet to review reports from the Stock Assessment Panel and the Socioeconomic Assessment Panel. The Panel will also make recommendations to the Council on allowable biological catch and total allowable catch, and discuss research protocol for the offshore stock.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: (813) 228-2815.

Dated: April 14, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-9162 Filed 4-19-93; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council (Council) will hold public meetings of its Committees from April 27–28, 1993. The meeting will be held at the New Orleans Airport Hilton and Conference Center, 901 Airline Highway, Kenner, LA; telephone: (504) 469–5000.

On April 27, from 8 a.m. until 12 p.m., the Standing and Special Red Drum Scientific and Statistical Committee will meet to review the Red Drum Stock Assessment Panel report and the Red Drum Socioeconomic Assessment Panel report, to make its recommendations to the Council, and to discuss research protocol for Red Drum. Also on April 27, the Standing and Special Mackerel Scientific and Statistical Committee will meet from 1 p.m. until 5 p.m. to review the Mackerel Stock Assessment Panel report and the Mackerel Socioeconomic Assessment Panel report, to make its recommendations to the Council and to review and discuss Eastern Zone King Mackerel Trip Limit Options.

On April 28 the Standing and Special Reef Fish Scientific and Statistical Committee will meet from 8 a.m. until 5 p.m., to review and comment on Draft Amendment No. 7 to the Reef Fish Fishery Management Plan (including the Regulatory Impact Review and Environmental Assessment). This draft amendment contains a proposal to implement an individual transferable quota system for the commercial harvest of red snapper in the Gulf of Mexico. The draft amendment also contains options pertaining to enforceability of general reef fish measures and an adjustment to the proposed reef fish trap moratorium to allow transfer of fish trap permits among members of the immediate family.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: April 14, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–9160 Filed 4–19–93; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Mackerel Advisory Panel (Panel) on April 28, 1993. The meeting will be held from 9 a.m. until 3 p.m., at the New Orleans Airport Hilton and Conference Center, 901 Airline Highway, Kenner, LA; telephone: (504) 469–5000.

The Panel will meet to review reports from the Stock Assessment Panel and the Socioeconomic Assessment Panel. The Panel will also make its recommendation to the Council, and review King Mackerel Trip Limit Options for the Eastern Zone.

For more information contact Terrance R. Leary, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: April 14, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–9163 Filed 4–19–93; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Reef Fish Advisory Panel (Panel) on April 29–30, 1993. The meeting will be held at the New Orleans Airport Hilton and Conference Center, 901 Airline Highway, Kenner, LA., telephone: 504–469–5000. It will begin on April 29 at 8 a.m. and run until 5 p.m., and will reconvene on April 30 at 8 a.m. and adjourn at 3:30 p.m. The agenda is as follows.

The Panel will review and comment on draft Amendment No. 7 to the Reef Fish Fishery Management Plan (including the Regulatory Impact Review and Environmental Assessment). This draft amendment contains a proposal to implement an individual transferable quota (ITQ) system for the commercial harvest of red snapper in the Gulf of Mexico. The draft amendment also contains options pertaining to enforceability of general reef fish measure and an adjustment to the proposed reef fish trap moratorium to allow transfer of fish trap permits among members of the immediate family.

For more information contact Steven M. Atran, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: April 14, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–9161 Filed 4–19–93; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Permit; The U.S. Army Corps of Engineers (P504B).

On January 26, 1993, notice was published (58 FR 6116) that an application had been filed by the U.S. Army Corps of Engineers, to take listed Snake River sockeye salmon (*Oncorhynchus nerka*) and listed Snake River fall and spring summer chinook salmon (*O. tshawytscha*) for the purposes of scientific research and enhancement as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing endangered fish and wildlife (50 CFR parts 217–222).

Notice is hereby given that on April 14, 1993, as authorized by the provisions of the ESA, NMFS issued Permit Number 828 for the above taking subject to certain conditions set forth therein.

Issuance of this Permit, as required by the ESA, was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This Permit was also issued in accordance with and is subject to parts 217–222 of title 50 CFR, the NMFS regulations governing endangered species permits.

The application, Permit and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 8268, Silver Spring, MD 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

Dated: April 14, 1993.

Herbert W. Kaufman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93-9156 Filed 4-19-93; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of 4 Permits.

On March 5, 1993, notice was published (58 FR 12578) that four applications (P507F, P250E, P211G, and P503D) had been filed by the Washington Department of Fisheries (WDF), Washington Department of Wildlife (WDW), Oregon Department of Fish and Wildlife (ODFW), and the Idaho Department of Fish and Game (IDFG), respectively, to incidentally take listed Snake River sockeye salmon (*Oncorhynchus nerka*), spring/summer chinook salmon (*O. tshawytscha*), and fall chinook salmon (*O. tshawytscha*).

The above applications were submitted to receive permission for the operation of artificial propagation facilities as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing endangered fish and wildlife permits (50 CFR parts 217-227).

Notice is hereby given that on April 13, 1993, as authorized by the provisions of the ESA, NMFS issued Permits for the above incidental takings subject to certain conditions set forth therein.

Issuance of these Permits, as required by the ESA, as amended, was based on a finding that: (1) The taking would be incidental; (2) the applicant would, to the maximum extent practicable, monitor, minimize and mitigate the impacts of such taking; (3) the taking would not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (4) there were adequate assurances that the conservation plan would be funded and implemented, including any measures required by the Assistant Administrator. These Permits were also issued in accordance with and are subject to Parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The applications, Permits and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 8268, Silver Spring, MD 20910 (301/713-2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230-5400).

Dated: April 14, 1993.

Herbert W. Kaufman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93-9157 Filed 4-19-93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of Application for a Scientific Research Permit (P466A).

Notice is hereby given that Mr. Scott D. Kraus, Edgerton Research Laboratory, New England Aquarium, Central Wharf, Boston, MA 01220-3309, requests authorization to harass up to 20,000 harbor porpoise (*Phocoena phocoena*) annually during the conduct of underwater acoustic playback experiments, over a three-year period. Individual animals may be harassed up to 20 times annually. Activities will be carried out in the inshore and coastal waters of Maine.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices (by appointment):

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713-2289); and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Dr., Gloucester, MA 01930 (508/281-9200).

Dated: April 13, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93-9158 Filed 4-19-93; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States and, possibly, certain foreign countries to practice the invention embodied in U.S. Patent Application Ser. No. 7-971,642, titled "Apparatus and Method for Computer Vision Measurements," to NORAMCO Engineering Corp., having a place of business in Hibbing, MN. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety days from the date of this published Notice, NTIS receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention describes a computer vision system and image processing method for accurately determining the size and shape of coarsely textured, irregular and layered pieces of ore and the like. The system comprises a camera for producing an image of the ore, a digitizer for digitizing the camera image, and a video processor for processing the digitized image. An optional digital computer may be employed for controlling the overall system and for determining the dimensions, mass, and surface area of each piece of ore based on the processed image. The digitizer breaks down the camera image into a plurality of pixels and a set of line-spin masks, each including a line of negative unit or center weighted values and a central positive value equal to the absolute value of the negative values and each with the line disposed in a different orientation, are multiplied by the digital values of each of the pixels to determine new values for the pixels. A pixel field made up of lowest pixel values is used to determine particle sizes and shapes.

The availability of SN 7–971,642 for licensing is published in the **Federal Register**, simultaneously with this announcement.

A copy of the instant patent application is available for sale at the NTIS Order Desk, Phone 1–800–553–NTIS.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

[FR Doc. 93–9168 Filed 4–19–93; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Sri Lanka

April 15, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: April 16, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6708. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for carryforward, special carryforward and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23 1992). Also see 57 FR 29290, published on July 1, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 15, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 25, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on July 1, 1992 and extends through June 30, 1993.

Effective on April 16, 1993, you are directed to amend further the directive dated June 25, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka:

Category	Adjusted twelve-month limit [1]
340/640	1,185,152 dozen of which not more than 387,606 dozen shall be in Categories 340–Y/640–Y [2].
347/348/847	1,137,683 dozen of which not more than 716,054 dozen shall be in Categories 347–T/348–T/847–T [3].
635	343,852 dozen.
647/648	769,132 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1992.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0038, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2035, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0042, 6117.90.0042, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2035, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050; Category 847–T: only HTS numbers 6103.29.2044, 6103.49.3017, 6103.49.3024, 6104.29.2041, 6104.29.2045, 6104.69.3034, 6104.69.3038, 6112.19.2080, 6112.19.2090, 6117.90.0051, 6203.29.3046, 6203.49.3040, 6203.49.3045, 6204.29.4041, 6204.29.4047, 6204.69.3052, 6204.69.9044, 6211.20.3040, 6211.20.6040, 6211.39.0040, 6211.49.0040 and 6217.90.0070.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–9223 Filed 4–19–93; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Exemption for Certain Contracts Involving Energy Products

AGENCY: Commodity Futures Trading Commission.

ACTION: Final order.

SUMMARY: In response to an application for exemptive relief, the Commodity Futures Trading Commission ("Commission") proposed to issue an order exempting from regulation under the Commodity Exchange Act, 7 U.S.C. 1 *et seq.* ("Act"), certain contracts for the deferred purchase or sale of certain specified energy products. 58 FR 6250 (January 27, 1993). This exemptive order is being issued pursuant to the exemptive authority recently granted to the Commission in the Futures Trading Practices Act of 1992. The Commission's Order is intended to provide greater legal certainty regarding trading in these products.

EFFECTIVE DATE: May 20, 1993.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel or Joseph B. Storer, Economist, Division of Economic Analysis, Telephone: (202) 254–6990 or 254–7303, respectively, or David R. Merrill, Deputy General Counsel, Office of the General Counsel, Telephone: (202) 254–9880, Commodity

Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Framework

As the Commission noted in the Notice Proposing Issuance of an Order, 58 FR at 6250, section 2(a)(1)(A) of the Act grants the Commission exclusive jurisdiction over accounts, agreements and transactions commonly known as options, and transactions involving contracts of sale of a commodity for future delivery traded or executed on a contract market or any other board of trade, exchange, or market. 7 U.S.C. 2. The Act and Commission rules require that transactions in commodity futures contracts and commodity option contracts, with narrowly defined exceptions, occur on or subject to the rules of contract markets designated by the Commission.[1]

The recently enacted Futures Trading Practices Act of 1992, Public Law No. 102–564 ("1992 Act"), added new subsections (c) and (d) to section 4 of the Act. New section 4(c)(1) authorizes the Commission, by rule, regulation, or order, to exempt any agreement, contract or transaction, or class thereof, from the exchange-trading requirements of section 4(a) or any other requirement of the Act other than section 2(a)(1)(B).[2] New section 4(c)(2) provides that the Commission may not grant an exemption from the exchange-trading requirement of the Act unless, *inter alia*, the agreement, contract or transaction will be entered into solely between "appropriate persons", a term defined in new section 4(c)(3).[3] In granting exemptions, the Commission must also determine specifically that the exchange trading requirements of section 4(a) should not be applied, that the agreement, contract or transaction in question will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act and that the exemption would be consistent with the public interest and the purposes of the Act.[4]

B. The Proposed Order

The Commission, on January 27, 1993, published for public comment the proposed order. The Commission proposed this order in response to an application for exemptive relief ("application") filed by a group of entities (the "Energy Group") which represented that each is a producer, processor and/or merchandiser of crude oil, natural gas and/or other crude oil or natural gas product, or is otherwise engaged in a commercial business in these commodities.[5]

The application, submitted pursuant to Section 4(c) of the Act, is for an order exempting from regulation transactions for the purchase and sale of certain energy products through contracts that meet specified criteria. As noted in the Notice Proposing Issuance of an Order, the applicants based their request for an exemption both on the nature of the participants in, and on various representations regarding the usage and form of, these transactions.[6]

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[1] Sections 4(a), 4c(b) and 4c(c) of the Act; 7 U.S.C. 6(a), 6c(b), 6c(c). Section 4(a) of the CEA specifically provides, *inter alia*, that it is unlawful to enter into a commodity futures contract that is not made on or subject to the rules of a board of trade which has been designated by the Commission as a "contract market" for such commodity. 7 U.S.C. 6(a). This prohibition does not apply to futures contracts made on or subject to the rules of a foreign board of trade, exchange or market. 7 U.S.C. 6(a).

[2] Specifically, section 4(c)(1), 7 U.S.C. 6(c)(1), provides:

"In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated as a contract market for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a), or from any other provision of this Act (except section 2(a)(1)(B)), if the Commission determines that the exemption would be consistent with the public interest."

[3] Section 4(c), 7 U.S.C. 6(c)(3), provides that:

"* * * the term 'appropriate person' shall be limited to the following persons or classes thereof:

"(A) A bank or trust company (acting in an individual or fiduciary capacity).

"(B) A savings association.

"(C) An insurance company.

"(D) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.).

"(E) A commodity pool formed or operated by a person subject to regulation under this Act.

"(F) A corporation, partnership, proprietorship, organization, trust, or other business entity with a net worth exceeding $1,000,000 or total assets exceeding $5,000,000, or the obligations of which under the agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keepwell support, or other agreement by any such entity or by an entity referred to in subparagraph (A), (B), (C), (H), (I), or (K) of this paragraph.

"(G) An employee benefit plan with assets exceeding $1,000,000 or whose investment decisions are made by a bank, trust company, insurance company, investment adviser registered under the Investment Advisers Act of 1940 (15 U.S.C. 80a–1 et seq.), or a commodity trading advisor subject to regulation under this Act.

"(H) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing.

"(I) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) acting on its own behalf or on behalf of another appropriate person.

"(J) A futures commission merchant, floor broker, or floor trader subject to regulation under this Act acting on its own behalf or on behalf of another appropriate person."

[4] Specifically, section 4(c)(2), 7 U.S.C. 6(c)(2), states:

"The Commission shall not grant any exemption * * * from any of the requirements of subsection (a) unless the Commission determines that (A) the requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and (B) the agreement, contract, or transaction—

"(i) Will be entered into solely between appropriate persons; and

"(ii) Will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under this Act."

As is frequently the case when Congress grants a regulatory agency authority to act in a manner consistent with "the public interest and the purposes of" its enabling statute, little statutory elaboration is given. As commonly understood, however, an agency, such as the Commission, is to apply this standard against the template of its regulatory scheme. In this regard, the Conference Report states that the "public interest" under section 4(c) includes "the national public interests noted in the [Act], the prevention of fraud and the preservation of the financial integrity of markets, as well as the promotion of responsible economic or financial innovation and fair competition." H.R. Rep. No. 978, 102d Cong., 2d Sess. 78. The Conference Report goes on to state that "[t]he Conferees intend for this reference to the 'purposes of the Act' to underscore their expectation that the Commission will assess the impact of a proposed exemption on the maintenance of the integrity and soundness of markets and market participants." H.R. Rep. No. 978, 102d Cong., 2d Sess. 78. However, the Conference Report on the 1992 Act also states that:

"The Conferees do not intend for this provision to allow an exchange or any other existing market to oppose the exemption of a new product solely on grounds that it may compete with or draw market share away from the existing market."—H.R. Rep. No. 978, 102d Cong., 2d Sess. 79 (1992).

[5] The submission represents that each of the members of the Energy Group is an active participant in the principal domestic and international markets for crude oil and/or natural gas and the products and by-products thereof, which regularly engages in the purchase of such commodities for use in its business operations, the sale of such commodities for use by end-users and the transport of such commodities through pipeline, vessel or truck deliveries.

[6] Specifically, as stated in the application, see 58 FR at 6251, the exemption would:

"* * * preclude participation * * * by members of the general public and * * * limit the * * * [relief] to those appropriate persons who, in the context of their business activities, incur risks related to the underlying physical commodities. In addition, the exemption will require that each * * * Contract [covered by the relief would] impose binding delivery obligations on the parties (with the exception of those covered by * * * [a specified] proviso * * *) and that it not provide

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The applicants further reasoned that the exemption was needed to provide legal clarity and certainty regarding the trading of these products. In this regard, as noted in the **Federal Register** notice, 58 FR at 6251, the applicants contended that the requested exemption should "recognize() the ability of commercial entities to settle * * * Contracts through the full range of commercially available forms of settlement," and should "allow commercial entities to conduct their necessary business activities in the domestic and foreign oil and gas markets * * * with the requisite degree of legal certainty and comfort."

In addition, the application also addressed the public interest to be served by the Commission's issuance of an order granting this request for an exemption. The Commission included this analysis in the Notice for comment, quoting extensively from it. See, 58 FR at 6251. In this regard, as noted in the **Federal Register** notice, the applicant reasoned that the exemption would be in the public interest because "[t]hose entities which satisfy * * * the proposed exemption are sufficiently sophisticated and knowledgeable to protect their own interest in connection with * * * Contracts, regardless of whether the regulatory protections afforded under the Act are available * * *;" because "the exemptive relief * * * is necessary in order to permit commercial commodity markets to function effectively * * *;" because "the financial integrity of the markets for such * * * Contracts will be adequately addressed by the limitation of appropriate persons and the measures adopted by each market participant * * *;" and because "such Contracts lack the degree of standardization and fungibility required in order to permit them to be traded on an exchange." *Id.*

Finally, the Commission included seven issues on which it particularly sought public comment. These included the list of eligible "appropriate persons," the Commission's description of the commodities covered by the exemption, its description of the cash market, including the use of brokers and of netting arrangements, the possible effect on contract markets from granting the exemption, and whether section 4b of the Act should be applicable to these transactions.

either party with the unilateral right to require its counterparty to offset the contract by cash settlement. The Contracts will therefore expose the parties to substantial economic risk of a commercial nature. Further, the Contracts will be entered into between two parties each of which acts as principal, and the material economic terms, including credit terms of the transaction will be subject to individual negotiation between the parties."

The application further explained that the requested exemption:

"* * * focuses on the commercial nature of the parties and the fact that the * * * Contracts impose binding delivery obligations, thereby establishing a "bright line" test. The exemption recognizes that, regardless of the purposes for which the parties enter into a * * * Contract, they may be required by their counterparty to make or receive delivery pursuant to the terms of the Contract. This will permit commercial entities to enter into * * * Contracts for hedging, risk management, pricing or other commercial purposes, provided that the terms of the agreements impose binding delivery obligations, the parties are legally permitted to make and receive delivery and are capable of doing so. In this respect as well, the exemption will facilitate the use of * * * Contracts for legitimate and necessary business purposes." (Citations omitted.)

C. Comments Received

The comment period closed on February 26, 1993. Sixteen comments were received; including eight from active participants in the energy cash or forward markets or entities representing such participants, three from futures exchanges, three from futures industry associations, one from a bar association committee and one from an attorney. All but one of the commenters generally supported issuance by the Commission of the proposed order.

Most commenters confirmed the accuracy of the Commission's description of applicable of applicable cash market practices. Several, however, suggested changes to the Commission's description, including in particular, clarifications with regard to the degree of standardization, or individual negotiation, of these contracts. Several further recommended that the Commission clarify additional aspects of the proposed order, including in particular, the applicability of the order to various other types of instruments and other of the Commission's rules and interpretations.

Others recommended that the commission modify certain aspects of the proposed order. These recommendations included modifying the persons proposed to be eligible for this relief, the breadth of commodities covered under the proposed order, and the effective date of the exemption. The opposing commenter, the Chicago Board of Trade ("CBT"), questioned the Commission's statutory authority for issuing the order as proposed, the rationality and fairness of the proposed order and whether the Commission has provided a meaningful opportunity for comment on the statutorily-required determinations regarding the public interest which it must make in issuing this order.

II. The Final Order

Based upon its careful consideration of the application for exemption, the comments received, and its independent analysis, the Commission is issuing an order under its authority in section 4(c) of the Act to exempt specified transactions from Commission regulation. The final order, and in particular, the modifications made to it from the proposal, are discussed below.

A. Statutory and Regulatory Basis of the Order

In proposing to issue this order under section 4(c) of the Act, the Commission made clear that it did "not intend to determine whether Energy Contracts are subject to the Act," nor to "affect the applicability to Energy Contracts of exemptions or interpretations previously issued by the Commission or its staff, including the Statutory Interpretation Concerning Forward Transactions, * * * or the forward contract exclusion set forth in section 2(a)(1) of the Act * * *." 58 FR at 6253, n.18. The CBT, the sole commenter opposing issuance of the proposed order, maintained that issuance of this order, pursuant to section 4(c) of the Act, was inconsistent with prior actions of the Commission and with the CBT's reading of the scope of the Act's section 4(c) exemptive authority.

The Congress, however, did not intend such a restrictive reading of the Commission's 4(c) exemptive authority. On the contrary, the Conferees stated that:

"In granting exemptive authority to the Commission under new section 4(c), the Conferees recognize the need to create legal certainty for a number of existing categories of instruments which trade today outside of the forum of a designated contract market.

"The provision included in the Conference substitute is designed to give the Commission broad flexibility in addressing these products * * *.

"In this respect, the Conferees expect and strongly encourage the Commission to use its new exemptive power promptly upon enactment of this legislation in four areas where significant concerns of legal uncertainty have arisen: (1) hybrids, (2) swaps, (3) forwards, and (4) bank deposits and accounts."

H.R. Rep. No. 978, 102d Cong., 2d Sess. (1992) at 80–81.

The Conferees further stated that they did

"not intend that the exercise of exemptive authority by the Commission would require any determination before hand that the agreement, instrument, or transaction for which an exemption is sought is subject to the Act. Rather, this provision provides flexibility for the Commission to provide legal certainty to novel instruments where the determination as to jurisdiction is not straightforward. Rather than making a finding as to whether a product is or is not a futures contract, the Commission in appropriate cases may proceed directly to issuing an exemption."

H.R. Rep. No. 978, 102d Cong. 2d Sess., (1992) at 82–83.[7]

Separately, several commenters recommended modifications to the proposed order on the grounds that relief under the order was not as far-reaching as the relief recently granted by the Commission with regard to hybrid instruments or to swap agreements. Thus, one commenter argued that the Commission should make this exemption applicable to any cash-settled energy contract because such transactions arguably would be exempt from regulation under the Commission's Exemption for Certain Swap Agreements. See, 58 FR 5587 (January 22, 1993). A second commenter suggested that the Commission reiterate that this relief was not intended to vitiate the continued vitality of the Commission's Statutory Interpretation Concerning Forward Contracts, 55 FR 39188 (Sept. 25, 1990). Finally, a third commenter requested that the Commission clarify that this exemptive order was not intended to supersede any other Commission rule or interpretation regarding those transactions which have been characterized as forward or trade option transactions.

In proposing this order, the Commission made clear that it did not intend to supersede or vitiate any other of its rules or interpretations, in particular those relating to the section 2(a)(1) exclusion of the Act. 58 FR 6253, n. 18. Rather, this order was proposed in response to a particular application for relief, and was intended to provide legal clarity with regard to certain transactions as described therein in specified commodities. Thus, the Commission is limiting the order to existing practices in these markets, as represented in the application. Nor does the Commission believe that the order should go beyond the representations in the application with regard to practices in these markets to practices which may be permitted under other Commission rules, such as the exemption for swaps in part 35 of its rules. Finally, by confining its order to these transactions, the Commission is not thereby making a determination regarding, or otherwise determining the legality or status of, any other type of transaction or superseding any other rule or interpretation.[8]

B. Commodities Eligible for the Exemption

Several commenters suggested that the Commission not limit this order for exemption to Energy Contracts, but rather extend it to all commodities. One commenter suggested that an exemption limited to energy contracts increases uncertainty regarding forward contract markets in other commodities, thus requiring that the Commission expand this exemption to cover transactions in all commodities. A second commenter argued that there was no legal basis to distinguish energy products from other commodities.

As discussed above, however, the Commission, in proposing this exemptive order, was responding to a particular application for relief. The record before the Commission, and the representations in the application, are limited to trading practices in the markets relating to energy products. See, 58 FR 6251, n.8. Moreover, the Congress specifically directed the Commission to consider the appropriateness of exemptive relief for the crude oil market. H.R. Rep. No. 978, 102d Cong., 2d Sess. at 81–82 (1992).

Based upon the intent of the Congress in enacting this exemptive authority, and upon the limited focus of the application for exemption and the corresponding record, the Commission is of the view that this final order is appropriately limited to transactions in Energy Contracts. Of course, as the Commission noted previously, this exemption in general, and its limitation to Energy Contracts in particular, does not affect the applicability or vitality of existing Commission policies or interpretations regarding transactions in these, or any other, commodities.

Several commenters also requested that the Commission make technical amendments to its enumeration of commodities included within the meaning of the term "Energy Contract." The Commission defined this term in its Notice Proposing Issuance of an Order as, "contracts for the purchase and sale of crude oil, natural gas, natural gas liquids or other energy products, including products derived from crude oil, natural gas or natural gas liquids, and used primarily as an energy source * * *." 58 FR 6251.

In particular, one commenter recommended that "condensates" should be explicitly included within the commodities enumerated. The Commission agrees. Other comments reflected confusion over whether a product must actually be used as an energy source in order to be included within the exemption. The Commission did not intend that inclusion of a particular product within the exemption rest upon a subjective test of intent as to its use as an energy source. For example, a particular company may purchase cargoes of crude oil for use in various commercial activities. The Commission did not mean to exempt only transactions for those specific shipments of the specified products which are used as an energy source. Rather, the enumerated products—crude oil, condensates, natural gas and natural gas liquids, which can be used in their natural state for energy—are included within the exemption regardless of whether the actual or ultimate use of these commodities is as an energy source.

Derivatives of these products are included to the extent that the derivative product is used primarily as an energy source. Again, however, it is the derivative product itself, such as gasoline, heating oil, or diesel fuel, and not the use made of particular lots of a fungible product, which is included under the exemption. The Commission, therefore, in its final order, is clarifying the description of the commodities included in the exemption.

C. Entities Eligible for the Exemption

The Commission, in its Notice, specifically requested comment regarding its enumeration of the entities which would be eligible for exemptive relief. This request elicited diverse opinions which raised several issues. As proposed, the exemptive order would have been applicable to "commercial participants who, in connection with their business activities, incur risks related to the underlying physical commodities, have the capacity to make or take delivery under the terms of the contracts, and are also eligible 'appropriate persons.'" The

[7] In any event, the commenter maintains that "CEA § 4(c) compels the CFTC, at the least, to determine that every instrument it exempts could be a futures contract." In this regard, the Commission notes that the legal uncertainty which this exemptive order addresses was occasioned by the belief of some observers that some of the instruments at issue are indeed futures contracts. See, e.g., *Transnor (Bermuda) v. BP North America Petroleum*, 738 F. Supp. 1472 (S.D.N.Y. 1990). Thus, regardless of the Commission's position on the appropriate characterization for specific types of transactions, the status of some of these transactions under the Act appears likely to be subject to continued dispute, and this potential for uncertainty provides a sufficient basis for the exercise of exemptive authority as to these transactions.

[8] In this regard, the Commission reiterates that the exemption granted here does not affect the applicability to Energy Contracts of the Commission's Statutory Interpretation Concerning Forward Transactions, 55 FR 39188 (September 25, 1990). Any transaction that has been or will be entered into consistent with that Interpretation remains excluded from regulation under the Act.

Commission further defined "eligible appropriate persons" as:

"(1) A bank or trust company (acting in an individual or fiduciary capacity) which is legally permitted and otherwise authorized to engage in such transactions; (2) a corporation, partnership, proprietorship, organization, trust, or other business entity with a net worth exceeding $1,000,000 or total assets exceeding $5,000,000, or the obligations of which under the agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keepwell support, or other agreement by any such entity or by an entity referred to in subsections (H), (I) or (J) of Section 4(c)(3); (3) any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing; (4) a broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) acting on its own behalf or on behalf of another appropriate person (as set forth herein); and (5) a futures commission merchant subject to regulation under the Act acting on its own behalf or on behalf of another appropriate person (as set forth herein)."

58 FR 6252.

Several commenters opined that the entities eligible for this relief should be extended to include not only "commercial participants * * * who incur risks related to the underlying physical commodities, [and] have the capacity to make or take delivery * * *," but also to include any appropriate person which is legally authorized to make or take delivery of the physical commodity. These commenters further suggested that an entity could so qualify "by contracting out its obligations to a person or entity that provides such services as storage or transportation of the underlying commodity."

In addition to the above revision to eligibility, several commenters also supported the inclusion of commodity pools within the list of "eligible appropriate person." These commenters supported this revision by reasoning that, "because there is no basis to distinguish between them [commodity pools] for purposes of exemptive relief under section 4(c)," commodity pools should be included within the terms of this exemption "on the same terms as swap transactions."

Other commenters disagreed with this view. One such commenter, a futures exchange, contended that permitting commodity pools to be covered by the exemption was contrary to the proposed order's stated rationale, reasoning that:

"[t]he purpose of the Proposed Order is ostensibly to permit transactions which are entered into for legitimate commercial purposes * * *. To treat a speculative commodity pool * * * as the equivalent of an entity engaged in the business of being a producer, processor and/or merchandiser of energy products, is contrary to the Proposed Order's objective of facilitating commercial activities free of unnecessary regulatory burdens * * *."

Based upon the above reasoning emphasizing the commercial nature of the eligible entities, the commenter further recommended that the Commission state explicitly that eligible parties under the exemption must have, "as part of the routine course of their business activities, * * * the physical capacity to produce, refine, store, transport or otherwise tangibly control the commodity," and questioned the need for conditions related to net worth and total assets. The commenter noted that by limiting the exemption to commercials, it would apply only to sophisticated entities and that the net worth and total asset conditions were therefore unnecessary, potentially excluding unnecessarily "small or start-up commercial entities * * *."

After carefully considering the views of the commenters, the Commission is limiting the final order to those types of commercial participants identified in the proposed order. The Commission is persuaded that this is appropriate in light of the limited nature of the application, and in light of its understanding of the nature of the transactions and the participants currently in these markets.

Consistent with this determination, the Commission is making clear that this exemption remains applicable to transactions that result in risks relating to making or taking delivery of the underlying physical commodities. Accordingly, the category of eligible appropriate persons for this exemption must have a demonstrable capacity or ability to make or take delivery. As the Commission explained in the Notice Proposing Issuance of an Order, at page 6252, "such capacity entails the ability to produce, refine, store, transport or otherwise tangibly control the physical commodity." This can be fulfilled, however, by *bona fide* contractual arrangements for these services.

Moreover, despite some merit in the observation that certain smaller, or start-up commercial firms may be excluded unnecessarily from eligibility for this exemption by the net worth and total assets conditions set forth in section (A)(ii) of the Order, in light of the general nature of the current participants in the markets, the Commission believes that smaller commercial firms, which cannot meet these financial criteria, should not be included. In this regard, size is a relevant proxy for measuring the expertise of, and participation in these types of markets, and for an entity's capability of making or taking delivery in these markets. Moreover, the Commission notes that even smaller or start up firms should be able to meet these financial requirements through the use of various types of permitted guarantees, and thereby qualify for this exemption.[9]

On a separate issue, one commenter requested that the final order also exempt "any person or class of persons offering, entering into, rendering advice, or rendering other services with respect to such Energy Contracts, in connection with such activity." The commenter reasoned that extension of relief to those advising or rendering advice or other such services in connection with these transactions, which was included in the exemption for swap and hybrid instruments, is equally applicable to this proposed exemption.

Consistent with section 4(c)(1) of the Act and the Commission's exemptions for swap and hybrid instruments, the Commission is providing that persons offering, entering into, rendering advice, or rendering other services with respect to such Energy Contracts are eligible for this exemption.[10]

[9] In this regard, although the Commission has not provided that commodity pools or other collective investment vehicles, including investment companies, or floor brokers and floor traders separately constitute classes of "appropriate persons," to the extent that such entities qualify for exemption as an eligible entity under another category of "appropriate person," they will not be excluded from the exemption. Accordingly, such entities may qualify as appropriate persons if, in connection with their business activities, they incur risks, in addition to price risk, related to the underlying physical commodities, have a demonstrable capacity or ability, directly or through separate *bona fide* contractual arrangements, to make or take delivery under the terms of the contracts, are not prohibited by law or regulation from entering into such contracts, and otherwise meet the qualifications set forth in one of the enumerated categories of appropriate persons. However, any collective investment vehicle formed solely for the purpose of entering into Energy Contracts will not qualify for the exemptive relief provided under the Commission's Order. Of course, a commodity pool operator will continue to be subject to Section 4o of the Act in connection with its solicitations or other activities as a CPO even though it may purchase or direct the purchase of Energy Contracts that are subject to the Commission's Order.

[10] As the Commission noted in the Notice Proposing Issuance of an Order, it did "not intend that the proposed condition that an Energy Contract be a principal-to-principal transaction preclude the use of brokers or other agents in connection with the negotiation of, or the performance or settlement of the obligations under, a contract * * *. 58 FR 6252, n.11. The final order makes clear that it encompasses agents rendering such services, including advisory services, for those activities.

However, as explained in connection with the exemption for swap transactions, the application of this exemption to such persons

"engaged in activity otherwise subject to the Act would not be exempt for such activity, even if it were connected to their exempted * * * [Energy Contract] activity. Also in this regard, the Commission wishes to make clear that the exemption does not apply to any financial, recordkeeping, reporting or other requirements imposed on any person in connection with their activities that remain subject to regulation under the Act. Thus, for example, futures commission merchants must continue to account for any liabilities arising out of any * * * [Energy] agreement in meeting the net capital requirements of Commission Rule 1.17 just as they do in the case of other financial instruments not regulated under the Act. Similarly, the risk assessment recordkeeping and reporting requirements imposed on futures commission merchants by new section 4f(c) of the Act apply * * *." 58 FR at 5589.

Finally, several commenters suggested that the Commission clarify the role of written representations in forming a reasonable basis for the belief that a counterparty qualifies as eligible for this exemption. A second commenter requested that the Commission also clarify that a reasonable belief is required as to the counterparty's eligibility with respect to both its capacity for delivery and its inclusion as an eligible appropriate person.

These determinations, that there is a reasonable basis to believe that a counterparty is eligible to enter into the transaction both with regard to its capacity and as an appropriate person, are to be made at the inception of the transaction. Moreover, an eligible entity that has a reasonable basis to believe its counterparty is also an eligible entity when entering into a master agreement may rely on such representations continuing, absent information to the contrary.[11] Compare, 58 FR at 5589.

D. Description of Exempt Transactions

In general, commenters agreed with the accuracy of the Commission's description of the operation of these markets in energy products. However, the entities which filed the application for this exemption, sought, in their comment letter, to distinguish the relative degree of individual negotiation over particular categories of the contract's economic terms. In particular, this commenter pointed out that the terms of the transactions regarding quality and location in many of these markets, because they involve "a single supply location," "are fixed and not the subject of individual negotiation."

The Commission is aware that the terms regarding the quality and location of Energy Contracts, as well as other conventions surrounding their trading are standardized. Nevertheless, these transactions can be distinguished by the fact that, because their credit terms are individual to the counterparties, they are not fungible and are created through the direct negotiation of the parties to the transaction. Compare, 58 FR at 5591.

Several commenters also requested that the Commission confirm that the requirement for binding delivery on the contracts is not affected by inclusion in the contract of a termination right which is triggered by an event of default, such as the insolvency of a counterparty. The Commission concurs that *bona fide* terminations occurring under the terms of a contract, for contingencies such as default or insolvency that are not expected by the parties at the time the contract is entered into, will not invalidate application of the exemption to the transaction. In this regard, however, the Commission cautions that the inclusion of such provisions, and their use, must be *bona fide* and not for the purpose of evading the terms of this exemption.

Finally, one commenter argued that the proposed order is arbitrary because it would have exempted only contracts which were bilateral and not subject to a mutual risk clearing system.[12] The CBT concluded that this is contrary to the public interest because those methods which are included within the exemptive relief are, in its view, inferior to a true clearing system, which is not included within the scope of this order. As the Commission has noted elsewhere in this release, however, this order is responsive to the application for relief and is tailored to current practices in these markets. Accordingly, the order is limited in scope to bilateral, individually negotiated instruments, which is the common practice in these markets.

E. Breadth of Exemptive Relief

The Commission requested comment on whether it should reserve anti-fraud jurisdiction under section 4b of the Act, 7 U.S.C. 6b, over these instruments. No commenter explicitly supported the retention by the Commission of anti-fraud jurisdiction. To the contrary, almost all of the commenters opposed reservation of this authority. Most agreed with the views expressed by one commenter that:

"[G]iven the commercial characteristics of these transactions and the significant requirements to be 'commercial participants' and 'appropriate persons,' the [commenter] * * * does not believe that section 4(b) (sic) of the Act (anti-fraud) should be applied to Energy Contracts."

In this particular instance, the Commission concurs with the commenters that it need not retain section 4b authority, to whatever extent that section of the Act would otherwise be applicable to these transactions.[13] However, sections 2(a)(1)(B) of the Act and the provisions of sections 6(c), 6c, 6(d) and 9(a)(2) of the Act, to the extent that these provisions prohibit manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market, will continue to apply.[14]

Finally, several commenters requested that the Commission broaden the exemption by making its application retroactive. As proposed, the Commission's order would have been effective upon publication for all executory transactions. Various commenters objected. One reasoned that:

"[I]f the CFTC determines that issuing the proposed exemption is consistent with the public interest, its determination should eliminate any legal uncertainties with respect to Energy Contracts entered into before as well as after the effective date of the exemption. The CFTC's final rules exempting

[11] As under the Part 35 rules, where a counterparty has ceased to be eligible for this exemption, an eligible entity nevertheless may enter into a "closing transaction" with the counterparty to terminate all obligations between them. See, 58 FR at 5589, n. 18.

[12] As the Commission noted in the Notice Proposing an Order:

"The requirement that Energy Contracts be bilateral and subject to individual negotiation is intended to assure that the transactions would not be subject to a clearing system where the credit risk of individual participants of the system to each other, with respect to a transaction to which each is a counterparty, would effectively be eliminated and replaced by a * * * system of mutualized risk of loss that binds members generally whether or not they are counterparties to the original transaction."—58 FR at 6253, n. 15.

[13] Of course, that is not to say that the Commission's decision not to reserve Section 4b anti-fraud jurisdiction will leave market participants without legal recourse for fraud in connection with these transactions. Market participants will continue to have available those state and common law remedies which have been applicable to these markets from their inception.

[14] Moreover, as the Commission noted in its Notice Proposing Issuance of an Order, at 58 FR 6253, n.19, this order "would not affect the applicability or protections of state law (other than gaming or "bucket shop" laws), or antifraud statutes of general applicability, to the exempted Energy Contracts or any other protections provided by other applicable federal laws. Congress specifically noted that, in exempting an instrument from the Act, the Commission cannot exempt it from applicable securities and banking laws and regulations." H.R. Rep. No. 978, 102d Cong., 2d Sess. 83 (1992).

certain swap and hybrid transactions apply retroactively, and * * * [the commenter] sees no reason why the proposed exemption should not also apply to existing Energy Contracts."

In light of the Commission's objective in issuing this order—to provide greater legal certainty regarding the trading of these instruments—and the uniform opinion of the commenters that the retroactivity of the order is an important component of providing that certainty, the Commission has determined that upon the order's effective date, it will apply retroactively, to all such transactions entered into on or after October 23, 1974. This is consistent with the Commission's recent promulgation of rules exempting certain swap transactions, 58 FR 5587, and certain hybrid instruments, 58 FR 5580 (January 22, 1993).

F. Public Interest and Purposes of the Act Determinations

1. Public Interest

In determining that its actions are consistent with "the public interest and the purposes of" its enabling statute, an agency, such as the Commission, applies the standard against the template of its over-all regulatory scheme. In this regard, the Conference report states that the "public interest" under section 4(c) includes the "national public interests noted in the [Act], the prevention of fraud and the preservation of the financial integrity of the markets, as well as the promotion of responsible economic or financial innovation and fair competition." H.R. Rep. No. 978, 102d Cong., 2d Sess. 78 (1992).[15] The Conference Report goes on to state that "[t]he Conferees intend for this reference to the 'purposes of the Act' to underscore their expectation that the Commission will assess the impact of a proposed exemption on the maintenance of the integrity and soundness of the markets and market participants." *Id.*

Energy Contracts are used by certain commercial entities that are engaged in the production, refining, processing or merchandising of crude oil, condensates, natural gas, natural gas liquids, or their derivatives which are used primarily as an energy source. Energy Contracts are used by these entities and other commercial entities in the conduct of their businesses. Reportedly, these markets have been chilled by the legal uncertainty surrounding these transactions. The Order should reduce uncertainty, thus allowing participants to negotiate and structure Energy Contracts in ways that most effectively address their economic needs, and thereby enhancing the global competitive position of U.S. businesses.

As noted by one commenter,

"Congress, when considering passage of the [Futures Trading Practices of 1992], acknowledged that the mandatory exchange-trading requirement, if applied to every commodity transaction having the indicia of a futures contract, may cause foreign market participants to engage in such transactions outside of the United States, creating 'competitive disadvantages for U.S. participants.'"

2. Material Adverse Effect on Regulatory or Self-Regulatory Responsibilities

In making this determination, Congress indicated that the Commission is to consider such regulatory concerns as "market surveillance, financial integrity of participants, protection of customers and trade practice enforcement."[16]

The record before the Commission does not support a conclusion that the purpose of the Act or the Commission's regulatory efforts thereunder have been adversely affected by the use of Energy Contracts or will be so by the issuance of the order. Energy Contracts have been entered into by commercial participants in the energy markets for a number of years, without any apparent adverse impact on market surveillance, financial integrity of participants, protection of customers and trade practice enforcement of regulated markets.

Specifically, the Commission has addressed concerns regarding financial integrity and customer protection through the requirement that Energy Contracts may only be entered into and/or only be transacted on behalf of "appropriate persons", as defined above. This approach ensures that such transactions involving Energy Contracts will be limited to sophisticated entities engaged in the businesses described above and who are financially able to bear risks associated with such transactions.[17]

The Commission also noted that the existence of Energy Contracts to date has not affected the ability of futures exchanges to fulfill their self-regulatory duties.[18] In this regard, commenters have asserted that the futures market and the Energy Contract markets are linked, with many of the same commercial entities using Energy Contracts also using the energy futures markets for hedging purposes. By creating a more certain legal environment for Energy Contracts, the potential for systemic risk due to disaffirmance of such contracts as invalid under the Act is reduced, and there is no reason to conclude that the exchanges' self-regulatory responsibilities will be adversely affected by permitting transactions under Energy Contracts to continue on this basis.[19]

3. Anticompetitive Considerations

Section 15 of the Act provides, in relevant part, that the Commission must consider the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives, policies, and purposes of the Act in adopting any rule, regulation, or exemption under section 4(c).[20] Thus, a formal analysis under the antitrust laws is not, by itself, dispositive of the issues raised by a Commission action.[21] As a result, the Commission is not compelled by section 15 to take the least anticompetitive course of action. Rather, where alternatives with varying degrees of regulatory benefit exist, the

[15] One commenter, a futures exchange, in its letter notes that in addressing certain elements of the public interest for futures trading, Congress has indicated that contract market designation and regulation under the Act is necessary to avoid creating an undue burden on commerce. *See* Section 3 of the Act. Seventy years after the enactment of Section 3, however, Congress enacted Section 4(c) authorizing exemptions from Section 4(a) of the Act, for certain products, because "traditional futures regulation * * * may create an inappropriate burden on commerce." H.R. Rep. No. 978, 102d Cong., 2d Sess. 80 (1992).

[16] H.R. No. 978, 102d Cong., 2d Sess. 79 (1992).

[17] In enacting the 1992 Act, Congress explicitly authorized exemptions from all provisions of the Act (except section 2(a)(1)(B)) and simultaneously enacted a " conforming amendment" to section 12(e)(2) explicitly acknowledging that State antifraud statutes of general applicability would continue to apply to exempted transactions.

[18] In this respect, neither of the two futures exchanges commenting on the proposal indicated that the proposed order will adversely affect their self-regulatory responsibilities.

[19] The Commission is unaware of any Energy Contracts that provide for settlement by tendering an exchange-created delivery instrument, such as an exchange-approved depositary or depository receipt or shipping certificates, that is specified in the rules of any designated contract market. Energy Contracts which did specify such delivery instruments could have an effect on certificated supplies for settlement of designated futures or option contracts and, accordingly, the creation of Energy Contracts specifying such delivery instruments should only occur after consultation with the Commission.

[20] Specifically, section 15, as amended by section 502(b) of the 1992 Act, provides:

"The Commission shall take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of this Act, as well as the policies and purposes of this Act, in issuing any order or adopting any Commission rule or regulation (including any exemption under sections 4(c) or 4c(b), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of this Act."

[21] See *Gordon* v. *New York Stock Exchange*, 422 U.S. 659, 690–691 (1975); *Silver* v. *New York Stock Exchange*, 373 U.S. 341 (1963).

Commission may adopt the approach that appears to be the most likely to achieve the objectives, policies, and purposes of the Act, even if that approach is not the least anticompetitive.[22]

Accordingly, section 15 requires the Commission to balance the likely anticompetitive impact of its action against the objective, policy, or purpose of the Act which that action may further. And, although the Commission must consider the public interest in maintaining or promoting competition, it need not weigh this interest equally against an objective, policy or purpose of the Act being served in reaching its final determination.

The Commission's consideration of the proposed order and its evaluation of the comments received in this regard has led it to conclude that any possible anticompetitive effects are clearly outweighed by the order's furtherance of the policies, purposes and objectives of the Act. First, the proposal does not appear to raise any significant competitive issues. As a number of commenters noted, the exemption, by improving the legal certainty of Energy Contracts, will reduce the risk that the physicals market may be disrupted. Commenters also noted that granting the exemption could result in expanded participation by foreign and domestic energy companies. Accordingly, the exemption furthers a fundamental objective of section 4(c)(1) of the Act, i.e., promoting "responsible economic or financial innovation and fair competition."

For the reasons explained above, the Commission, based upon the appropriate determinations made in accordance with the standards set forth in section 4(c) of the Act, hereby issues the following Order:

Order of the Commodity Futures Trading Commission Exempting From Regulation (Except as Specified) Certain Energy Contracts

Whereas, it is the Commission's understanding, based upon representations contained in an Application for Exemption, dated November 16, 1992, that contracts for the purchase and sale of crude oil, condensates, natural gas, natural gas liquids, or their derivatives which are used primarily as an energy source, by their terms, impose binding delivery obligations on the parties ("Energy Contracts"). These Energy Contracts do not provide either party with the unilateral right to offset the contract or to discharge its obligation under the contract by a cash payment, except pursuant to a *bona fide* term of the contract permitting the unilateral termination of the contract for force majeure, insolvency or bankruptcy of one of the parties, default or other inability to perform, unexpected at the time the contract is entered into ("*bona fide* termination right"). Energy Contracts thus expose the counterparties to the substantial economic risk of a commercial cash market transaction in which delivery of the product is required pursuant to the terms of the contract. Further, Energy Contracts are entered into between principals; and their material economic terms (including, in particular credit terms) are subject to individual negotiation between the parties.[23]

The Commission further understands that parties to Energy Contracts satisfy or otherwise settle their obligations through several types of commercially acceptable arrangements, including the seller's passage of title and the purchaser's payment and acceptance of the commodity underlying the contract.[24] Passage of title and acceptance of the commodity constitutes performance under a *bona fide* contract regardless of whether the buyer lifts or otherwise takes delivery of the cargo or receives pipeline delivery, or as part of a subsequent separate contract, passes title to another intermediate purchaser in a "chain", "string" or "circle" within a "chain."

The physical delivery obligation specified in an Energy Contract entered into between two parties can also be satisfied through various other arrangements between the parties. For example, in the case of crude oil and crude oil products, the physical delivery obligation could be satisfied by exchanging one quality, grade or product type for another quality, grade or product type. Such transactions are referred to in the industry as "grade and/or quality swaps" or "exchanges." In addition, the obligation could be satisfied by location swaps.

In addition, two parties to an Energy Contract may enter into a bilateral "netting" or other similar agreement, subsequent to the execution of an Energy Contract.[25] Under such an agreement, the two parties agree to "net" or "book out" the obligations imposed under two or more Energy Contracts which provide for delivery of the same commodity at the same delivery location and during the same delivery period and thus cancel each other. Such a netting agreement can be entered into at the time that the canceling Energy Contract is originated, or subsequently, through a different agreement, at a time prior to when performance on the contracts otherwise would be due.[26]

The Commission further understands that under current market practice, the parties to the original contract may enter into a subsequent agreement ("second contract") which provides for settlement in a manner other than by physical delivery. The second contract, however, cannot stand alone as an independent transaction; it is incidental to a pre-existing, *bona fide* Energy Contract. Moreover, the establishment of the second contract cannot be made a pre-condition of the initial Energy Contract; *e.g.*, one party cannot require its counterparty to agree in advance to the establishment of the second contract as a condition of acceptance of the initial Energy Contract. Accordingly, the second contract is a separately negotiated agreement and, if the counterparty subsequently does not agree to the second contract, the parties remain obligated in accordance with the binding delivery requirements imposed under the initial Energy Contract.

Existing market practice also permits three or more parties, upon finding that they form a "chain", or a "string" or "circle" within a "chain", to satisfy their obligations under an Energy Contract, whether or not title passes or

[22] See, e.g., *British American Commodity Options Corp.* v. *Bagley,* Comm. Fut. L. Rep. (CCH), 20,245 at 21334 (S.D.N.Y. 1976), *aff'd in part and rev'd in part,* 552 F.2d 482 (2d Cir. 1977), *cert. denied,* 434 U.S. 938 (1977).

[23] Parties to Energy Contracts may establish bilateral collateral or other credit protection arrangements, such as a letter of credit or other documentation of funds availability, to address credit issues.

[24] Cash market transactions in crude oil, petroleum products, natural gas and natural gas liquids, as well as other energy related commodities in which physical delivery is made, are effected through payment by the buyer and transfer of title by the seller to the buyer.

[25] In the energy markets, the terms "book out" (crude oil) and "book transfer" (other petroleum products) are cash market terms that generally refer to the cancellation or netting of physical delivery obligations between parties, the primary purpose of which is to prevent or minimize the uneconomic movement of the physical commodity.

[26] Rather than agreeing to net particular canceling Energy Contracts, two frequent counterparties, for purposes of ease of administration, may use a "master," or other form of bilateral agreement to achieve the same result. This master agreement, established prior to entry into the Energy Contracts, provides that the two counterparties agree to net energy Contracts of the same commodity at the same location and during the same delivery period. This agreement replaces the practice that counterparties agree to net particular canceling Energy Contracts, either to the time the second contract is entered into, or by a separate, subsequent agreement, with the understanding that all contracts between them which cancel each other will be netted, unless they have agreed not to apply the prior netting agreement at the time of entry into an Energy Contract.

is deemed to pass, through a subsequent, separate agreement, with unanimous consent of the parties, to "book out" and satisfy their obligations through separately negotiated bilateral cash payments or other mutually acceptable terms. It has been represented to the Commission that such arrangements are common in the energy cash market.[27] They are standard commercial practice to avoid and/or minimize transaction costs, non-economic payments and product movements, and for reducing the number of transactions necessary to perform all obligations between parties pursuant to the contracts which are "booked out."

And whereas, this order is limited to (A) commercial participants who, in connection with their business activities: (1) incur risks, in addition to price risk, related to the underlying physical commodities; (2) have a demonstrable capacity or ability, directly or through separate *bona fide* contractual arrangements, to make or take delivery under the terms of the contracts; (3) are not prohibited by law or regulation from entering into such Energy Contracts; (4) are not formed solely for the specific purpose of constituting an eligible entity pursuant to this Order; and (5) qualify as one of the following entities:

(i) A bank or trust company;

(ii) A corporation, partnership, proprietorship, organization, trust, or other business entity with a net worth exceeding $1,000,000 or total assets exceeding $5,000,000, or the obligations of which under the agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keepwell support, or other agreement by any such entity or by an entity referred to in subsections (A), (B), (C), (H), (I) or (J) of section 4(c)(3);

(iii) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(iv) A futures commission merchant subject to regulation under the Act; or

(B) Any governmental entity (including the United States, any state, any municipality or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

And whereas, this order also encompasses persons offering, entering into, rendering advice or rendering other services with respect to the agreement, contract, or transaction which is the subject of this Order, for such activity;

The Commission, pursuant to section 4(c) of the Act, hereby exempts from all provisions of the Commodity Exchange Act, 7 U.S.C. 1 *et seq.*, except sections 2(a)(1)(B) of the Act and the provisions of sections 6(c), 6c, 6(d) and 9(a)(2) of the Act, to the extent that these provisions prohibit manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market, the following transactions, entered into on or after October 23, 1974:

Contracts for the purchase and sale of crude oil, condensates, natural gas, natural gas liquids or their derivatives which are used primarily as an energy source, and which:

(1) Are entered into by and between participants covered by this Order, having at initiation of the contract a reasonable basis to believe that its counterparty is also within the terms of this Order;

(2) Are bilateral contracts between two parties acting as principals, the material economic terms of which are subject to individual negotiation by the parties; and

(3) Impose binding obligations on the parties to make and receive delivery of the underlying commodity or commodities, with no right of either party to effect a cash settlement of their obligations without the consent of the other party (except pursuant to a *bona fide* termination right), *provided, however,* that the parties may enter into a subsequent book out, book transfer, or other such contract which provides for settlement of the obligation in a manner other than by physical delivery of the commodity specified in the contract.

Issued in Washington, DC, this 13th day of April, 1993, by the Commission (Acting Chairman Albrecht and Commissioner Dial concurring, Commissioner Bair dissenting).

Jean A. Webb,

Secretary of the Commission.

Concurring Opinion of Acting Chairman William P. Albrecht

Today we have before us an exemption for large commercial participants in off-exchange energy based transactions. These transactions compose a large ongoing market for energy products of importance to U.S. and international commerce. We are considering this exemption in response to a petition submitted by several market participants who seek further certainty that this market is outside CFTC regulatory jurisdiction.

This market for energy products has been in existence for many years and over those years it has grown in size, importance and complexity. The Commission has never regulated this market, nor has it sought to regulate it. The market is characterized by principal to principal transactions between large sophisticated commercial entities. The Commission is not aware of fraudulent practices perpetrated against the general public by the participants in this market, nor indeed have any of the commercial participants in this market complained to the Commission of fraudulent practices by other participants. Also, there generally do not appear to be any concerns about the ability of these market participants to perform their obligations. Absent two events it is doubtful that the petitioners would have brought their request to us.

First, a vast number of transactions previously not considered to be within the scope of the Commodity Exchange Act were brought into question by a single court decision, *Transnor (Bermuda)* v. *BP North America Petroleum*, that applied the CEA to a foreign market of mostly commercial to commercial transactions. The Commission did not believe these transactions were the off-exchange "futures" contracts that Congress intended to prohibit and the Commission issued a statutory interpretation to that effect. Obviously, the parties in the 15 day Brent Market—major international oil and trading companies—should not have been able to escape their contractual obligations in these transactions by claiming the transactions were void as illegal futures contracts.

Second, the Commission's new exemptive authority granted by Congress in the Futures Trading Practices Act of 1992 frees the Commission from the constraints of the futures/forwards dichotomy. In this regard the exemptive authority allows the Commission to approach situations on a case by case basis. This freedom to try new approaches is the real value of the exemptive authority. The Commission is now able to review petitions or requests for exemption on a public policy basis in light of the seventy year history of regulating futures contracts as well as the current and expected needs of commerce.

I believe that public policy dictates that the Commission exempt the market before us today from Commission regulation. There does not appear to be any reason sufficient to justify Commission regulation, nor any necessity for the Commission to involve itself in this market. I view this market,

[27] The use of brokers, agents or a third-party to identify the existence of a "chain" or to facilitate the bilaterally negotiated "book out" of transactions forming a "chain" is not deemed to constitute a clearing system. The Commission has been advised that there are a number of third-party brokers and agents who provide this service in the energy cash market.

its transactions, and participants as clearly within the scope intended by Congress for the exercise of the Commission's new exemptive authority. Indeed, in enacting the exemptive authority Congress specifically directed us to address the crude oil market.

Some have argued that the Commission should not exempt these markets from the anti-fraud requirements of section 4b of the CEA. I disagree. First, in this commercial to commercial market there has not been shown any need for the Commission to take any action to prevent fraud. Second, as the Commission will not be involved with ongoing regulation of this market, or even be more than generally knowledgeable of the activities in this market, it will not possess the information necessary to enforce Section 4b. Third, the presence of 4b will be of little potential benefit and great potential harm. The terms of 4b limit its application to futures contracts entered into for or on behalf of a customer—serious limitations where the transactions are largely principal to principal and where the individual transactions would have to be proved to be futures contracts. Further, if a party to one of these exempt transactions were to seek to base a complaint on Section 4b, they would face the problem that the Commission has also chosen to exempt this market from section 22 of the Act, thus they may not have any right to bring a private action under the CEA. The potential harm of maintaining 4b jurisdiction is that such action on one hand may hinder the development of this market, undermining the legal certainty we seek to assure today and on the other hand give some the illusion of federal supervision by the CFTC, when in fact the CFTC does not and can not supervise this market.

Exemptive Order for Certain Energy Contracts, Concurring Opinion of Commissioner Joseph B. Dial

After the enactment of the FTPA, we find ourselves in the peculiar situation of possessing an exemptive authority that does not require our determination that something is a futures contract in order to exempt if from our jurisdiction. At least that's what the conference report language tells us.

Accordingly, we have worked diligently to avoid stepping on the legal and policy land mines inherent in this authority. I have gone over the new law and the conference report, as well as the case law and Commission interpretations in the area of forward contract definition. In light of concerns regarding Section 4b of the Act and this exemption, and the differing institutional opinions on this issue, I'd like to make clear how I view this exemption.

First, it is understandable that people make a comparison between the swaps and hybrids exemptive authority this Commission exercised in January, and the exemptive authority we are approving today. We are new at this endeavor, and so have little background as an institution in using this particular authority. Therefore, I think it is important to note some of the differences I see between today's exercise and the exemptive action the Commission took on January 14, 1993.

The forwards markets are understood to be fundamentally different from the swaps markets. In effectuating the swaps exemptive authority, we did not have the longstanding institutional experience that we do with forwards markets and their evolution. Swaps are a relatively new field of complex financial transactions, and are still the object of intense study by the government and the private sector. Therefore, the Commission deemed it prudent to retain 4b so that, for example, if in the unlikely event an unscrupulous entity were to convolute a swaps transaction into a boilerroom-type futures transaction, we could act expeditiously against such conduct.

Conversely, with the exercise of exemptive authority as to the energy contracts in current usage as described in this proposal, we have extensive legal and policy background relating to these well-known commercial markets.

As my colleagues are aware, I take a strong pro-enforcement stance in the investigation and prosecution of fraud in the markets we regulate. However, after reviewing the current request for exemption for existing markets, and in light of the Brent interpretation and the continuing evolution of these commercial transactions, I believe it more proper, from a policy and legal standpoint, not to retain 4b authority as to contracts described in this exemption. I came to this view after interpreting the conference report language regarding the use of exemptive authority in this area to indicate a need for clarification of our Brent interpretation. While I recognize that this exemption is regarded as an expansion of Brent, I view our action here today to be in accordance with the Congressional directives in the FTPA. Therefore, I've concluded that 4b should not be retained regarding exemptive authority for existing practices in these energy contracts.

If, after approval today, someone commits a fraudulent act relating to what appears on the surface to be an exempt energy transaction within this proposal, but is proven later to be a futures contract outside the parameters of this proposal, then the Commission of course has authority to prosecute that fraudulent conduct under 4b.

This exemption is unique, given its factual and legal background. I believe that by approving it we are exercising our exemptive authority in a manner consistent with Congressional intent. We are allowing existing energy contract practices in these markets, whose historical record is well-documented, to continue to perform a useful function in the international marketplace.

Dissenting Opinion of Commissioner Sheila Bair

Mr. Chairman. I have decided, albeit reluctantly, to vote against the final order before us today because of its failure to retain the general anti-fraud provisions contained in section 4b and 4o of the Commodity Exchange Act. Let me just briefly summarize the policy reasons why I believe we should retain such authority in the energy exemptive order.

In my view, the final order, by its terms, is not limited to forward contracts traditionally excluded from the jurisdiction of this agency. Rather, it goes significantly beyond the forward contract exclusion and extends to transactions which could very well meet the criteria for illegal off-exchange futures contracts traditionally applied by this agency and the courts. I believe that exempting such transactions from statutory provisions as basic and central to our regulatory scheme as Sections 4b and 4o is a serious misapplication of our new exemptive authority, and sets a dangerous precedent.

The Proposed Order Goes Beyond the Forward Contract Exclusion

As I stated, the order, by its terms, is not limited to forward contracts. Further, the fact that we are proceeding with an exemption from our jurisdiction, as opposed to describing a class of excluded transactions, demonstrates implicit recognition that some of the transactions which we are exempting could indeed be futures. Moreover, markets which qualify for this exemption operate very differently from traditional forward markets. The contracts are standardized, there is a large amount of speculative activity, and the overwhelming majority of transactions do not result in delivery, but are cash settled.

Indeed, the only arguable distinguishing feature between exempt transactions under the order and the typical gasoline boiler room operation is the requirement that participants be commercial entities. Yet, the "commerciality" requirement in the order is by and large undefined. Moreover, the Commission, has never recognized an exemption to its jurisdiction based solely on the "commerciality" of the participants, nor can I see any policy reason why commercial firms engaging in futures transactions should not have the basic protection of our anti-fraud provisions.

The "Sophistication" of Market Participants is Not a Valid Basis for Providing an Anti-Fraud Exemption

It has been argued that because the participants in exempt energy transactions are "sophisticated" institutional users or entities of high net worth, they don't "need" CFTC anti-fraud protections.

At the outset, I would note that if we are to rationalize exemptions from anti-fraud and other components of our regulatory scheme on the basis of the "sophistication" of market users, we might as well close our doors tomorrow, because approximately 98% of users of regulated, exchange-traded futures meet the eligibility rquirements of our swaps rule, and, these financial requirements are much higher than those in the order. Moreover, large firms are defrauded—we have brought a number of enforcement actions where the victims have been so-called institutional or sophisticated investors. I would also add that this order does allow for indirect public participation through collective investment vehicles, and through the guarantee provisions in paragraph ii of the appropriate person portion of the order.

The Existence of State Anti-Fraud Remedies is Irrelevant to the Issue at Hand

In addition, I do not view the existence of state anti-fraud remedies as a valid policy basis for providing an exemption from the CEA's basic anti-fraud protections. State remedies are always available in the absence of federal protections. It is important to remember that it was the historical inadequacy of state law protections, however, that gave rise to federal regulation of financial markets in the first place.

Retaining Residual Anti-Fraud Authority Would Not Place An Onerous Burden on the Markets

I also do not believe that we would place an onerous burden on the markets by retaining anti-fraud authority.

If we retained 4b and 4o, they would apply to those fraudulent transactions which we could demonstrate were futures contracts and thus otherwise subject to the CEA. In addition, since we are preserving the Brent Oil statutory interpretation, defendants would still be able to rely on that document as a shield against CFTC actions. Moreover, participants in these markets have always run the risk that transactions which do not meet the statutory interpretation could be deemed "futures" and thus subject to the whole plethora of CEA requirements, not just anti-fraud prohibitions. That is precisely why we are moving forward with this order. Is it really that much of a burden on market participants to retain a sliver of authority regarding fraudulent activity?

It should also be emphasized that 4b and 4o apply no more of an onerous burden on these markets than does state anti-fraud law. Indeed, given conflicts in state law, providing federal forums and remedies to these transactions is, if anything, less onerous.

Providing an Anti-Fraud Exemption Would Set a Dangerous Precedent and Is Unnecessary Given Our New Exemptive Authority

Finally, I think we are setting a dangerous precedent by not retaining anti-fraud authority. I can see no valid policy reason why to decide to retain anti-fraud authority in our swaps rule, yet to decline to do so here. My fear is that we will inevitably raise the expectations of other potential applicants for exemptive relief that they will also be able to escape Sections 4b and 4o.

What is especially frustrating to me is that we do not need to paint ourselves into this corner. The main reason why the CFTC sought general exemptive authority in last year's reauthorization was so that we would have the flexibility to craft appropriately tailored exemptive relief based on public policy considerations, instead of having to deal with the "all or nothing" jurisdictional decisions we had to make in the past. Yet, we are still following this "all or nothing" approach, when in my view, we should be carefully weighing individual aspects of our regulatory structure and making a reasoned determination as to which requirements should and should not apply to a particular class of transactions. And, for the reasons I have stated, I do not believe the case has been made for providing an exemption from basic anti-fraud provisions.

[FR Doc. 93-9037 Filed 4-19-93; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Department of Defense (DoD) Government-Industry Advisory Committee on the Operation and Modernization of the National Defense Stockpile; and, Requests for Membership Nominations

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92-463, the "Federal Advisory Committee Act," notice is hereby given that the DoD Government-Industry Advisory Committee on the Operation and Modernization of the National Defense Stockpile has been established, effective April 12, 1993. This statutory Committee was established pursuant to Section 3306, Public Law 102-484, the "National Defense Authorization Act for Fiscal Year 1993."

The National Defense Stockpile (NDS) Committee will provide advice and recommendations to the Secretary of Defense and other DoD officials regarding the operations and modernization of the NDS. The Committee will examine and evaluate methods and procedures governing NDS operations and recommend ways to effect modernization of the NDS consistent with material requirements and sound business management practices.

The Department of Defense is requesting nominations for qualified persons to be members of the NDS Committee. Names of qualified persons seeking nominations, along with a one-page resume detailing their experience regarding strategic and critical materials, may be submitted no later than May 19, 1993, to Mr. John Todaro, Director, Production Base, OASD (P&L) PR/PB, Department of Defense, Washington, DC 20301-8000.

Careful efforts will be made to ensure that the membership of the NDS Committee will be diverse and well-balanced in terms of the functions to be performed and the interest groups represented. Membership on the NDS Committee will consist of approximately 14 experts, including seven members from the Federal agencies specified in Public Law 102-484, and at least seven members representing the interests of the mining, processing, fabricating, and consuming segments of the materials industries, and other interested persons or representatives of interested organizations.

Individuals selected for membership to the NDS Committee, while serving on the business of the Committee away from home or regular place of business, shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by Section 5703 of Title 5 U.S.C., for persons intermittently employed in government service. Committee members will be appointed as DoD consultants and will be required to submit, prior to their appointment, a completed application package for government employment including a security questionnaire with fingerprints, a confidential financial disclosure statement, and various related forms.

For additional information regarding the charter and other aspects of the NDS Committee, please contact Mr. Tom Meeker, telephone: 703–694–4176.

Dated: April 14, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–9179 Filed 4–19–93; 8:45 am]

BILLING CODE 5000-04-M

Washington, DC, April 19th Hearing and Location

AGENCY: Defense Base Closure Commission and Realignment Commission.

ACTION: Notice.

SUMMARY: Pursuant to Public Law 101–510, as amended, the Defense Base Closure and Realignment Commission announces an addition to the Washington, DC investigative hearing schedule published in the **Federal Register** on March 12, 1993 (58 FR 15329).

The hearing is to be held on April 19 in G–50, Dirksen Senate Office Building, corner of First Street and Constitution Avenue NE., Washington, DC. Start time is 10 am for this session, which is scheduled to cover the General Accounting Office analysis and Commission review of the overall base-closure process used by the Department of Defense. The witness list and location have just recently been confirmed. This hearing has been publicly noticed in previous press releases and at previous hearings of the Commission. Less than 15 days notice is given in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. Tom Houston, Director of Communications at (703) 696–0504. Please contact the Commission to confirm last minute changes in dates, times, and locations of, and witness lists for all upcoming hearings.

Dated: April 15, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 93–9180 Filed 4–19–93; 8:45 am]

BILLING CODE 5000-04-M

National Communications System

Federal Telecommunication Standards

AGENCY: National Communications System, Office of Technology and Standards.

ACTION: Notice of proof-of-concept testing for final development and verification of concepts for adoption as proposed Federal Standard 1052, HF Radio Modems.

SUMMARY: This Government funded testing will be directed from the Institute for Telecommunication Sciences, the National Telecommunications and Information Administration's facility at Boulder, CO. The National Communications System (NCS) is inviting contributions of proposed FED-STD (pFS) 1052 prototype equipment for this test. The testing will include laboratory testing of the prototypes, followed by over-the-air testing between participating vendor's HF radio systems.

The draft pFS–1052 was developed by an industry and Government technical working group that began meeting in June 1991 as Technical Advisory Committee (TAC)–2. Some of the participating companies are encouraged to participate by providing prototype hardware for proof-of-concept testing. They should make their intention known in writing to Mr. Steve Karty, National Communications System, telephone (703) 746–8544.

The tests will be performed during the summer of 1993. Prototype equipment must be available no later than August 15, 1993. NCS intends to finalize proposed FED-STD-1052 during the fourth quarter of 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Karty, National Communications System, telephone (703) 746–8544.

FOR TECHNICAL INFORMATION CONTACT: Mr. David Peach, Institute for Telecommunication Sciences, Boulder, CO, telephone (303) 497–5309.

Dated: April 15, 1993.

L. M. Bynum,

Alternate OSD, Federal Register Liaison Office, Department of Defense.

[FR Doc. 93–9181 Filed 4–19–93; 8:45 am]

BILLING CODE 5000-04-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Defense Conversion will meet on May 6-7, 1993. The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The first session will commence at 8:30 a.m. and terminate at 10 a.m. on May 6; the second session will commence at 10 a.m. and terminate at 5 p.m.; the third session will commence at 5 p.m. and terminate at 5:30 p.m. on May 6; the fourth session will commence at 8:30 a.m. and terminate at 10:30 a.m. on May 7; and the fifth session will commence at 10:30 a.m. and terminate at 1 p.m. on May 7, 1993. The first, third, and fifth session of the meeting will be closed to the public. The second and fourth sessions of the meeting will be open to the public.

The purpose of the meeting is to provide the Department of the Navy with an assessment of the current capability of the defense industry to economically move into the commercial sector, and assess the actions necessary on the part of the Department of the Navy and industry to carry out the provisions of the Defense Conversion, Reinvestment, and Transition Act of 1992.

The open sessions of the meeting will include briefings and discussions relating to Congressional national policy perspectives of defense conversion, technology deployment, Department of Commerce initiatives, and Department of Defense perspectives and execution.

The remaining sessions of the meeting will include briefings and discussions that contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening these sessions of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that the first, third, and fifth sessions of the meeting will be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander R. C.

Lewis, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (703) 696-4870.

Dated: April 12, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-9130 Filed 4-19-93; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Office of Energy Markets and End Use
2. EIA–457A/H
3. 1905–0092
4. Residential Energy Consumption Survey
5. Extension
6. Triennially
7. Mandatory
8. Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, and Small businesses or organizations
9. 9,430 respondents
10. .333 responses
11. 2.08 hours per response
12. 6,557 hours
13. EIA–457A/H collect comprehensive national and regional data on the consumption of energy in the residential sector. Data are used for analysis and forecasting. Housing and demographic characteristics data are collected via personal interviews, and consumption and expenditure billing data are collected from the energy suppliers. Rental agents are contacted by telephone to check on fuels used in rental apartments.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980 (Pub. L. No. 96–511), which amended Chapter 35 of Title 44 of the United States Code (See 44 U.S.C. 3506 (a) and (c)(1)).

Issued in Washington, DC, April 8, 1993.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 93–9207 Filed 4–19–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Application Filed With the Commission

April 14, 1993.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Amendment of License

b. Project No.: 2743–022

c. Date Filed: February 1, 1993

d. Applicant: Alaska Energy Authority

e. Name of Project: Terror Lake

f. Location: The project is located approximately 25 miles southwest of the City of Kodiak, Alaska on the Terror and Kizhuyak Rivers and their tributaries.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Applicant Contact: Alaska Energy Authority, Attn: Thomas J. Arminski, Permit and Right-of-Way Specialist, P.O. Box 190869, 701 East Tudor Road, Anchorage, AK 99519–0869.

i. FERC Contact: Buu T. Nguyen, (202) 219–2913

j. Comment Date: May 28, 1993

k. Description of Amendment: Alaska Energy Authority applied for an amendment of license to include an additional 10–kW hydroelectric unit at a dam valve house, in the project. The licensee installed the 10–kW unit in July 1992, to replace an existing propane generator which was inadequate for the remote operation of a release valve. The 10–kW unit does not provide power into the project's transmission system. The water diverted to the unit from a discharge conduit is in turn discharged into the Terror River.

l. This notice also consists of the following standard paragraphs; B, C, and D2.

Standard Paragraphs

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: The Director, Office of Hydropower Licensing, Division of Project Compliance and Administration, Federal Energy Regulatory Commission, ATTN: HL–21, Room 1148 UCP, at the above address. A notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 93–9146 Filed 4–6–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-237-006 and 007]

Alabama-Tennessee Natural Gas Co.; Proposed Change in FERC Gas Tariff

April 14, 1993

Take notice that Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), on April 9, 1993, submitted the following revised tariff sheets in order to make certain corrections to the rates reflected on the tariff sheets tendered as part of its motion rate filing on March 31, 1993 ("March 31 Filing):

Sub. 41st Revised Sheet No. 4
Sub. 6th Revised Sheet No. 4B

Alabama-Tennessee proposes an effective date of April 1, 1993 for the revised tariff sheets.

Alabama-Tennessee states that it has recently come to its attention that it inadvertently used incorrect demand units in deriving the rates submitted as part of its March 31 Filing. In order to correct this, Alabama-Tennessee is submitting substitute tariff sheets which, according to Alabama-Tennessee, results in a minor decrease in the rates contained in the March 31 Filing. Alabama-Tennessee further states that it is proposing no other changes to its March 31 Filing other than those relating to the use of the correct demand units reflected on the substitute tariff sheets. In addition to the revised tariff sheets, Alabama-Tennessee submitted workpapers supporting the derivation of the corrected rates as well as an impact study which, according to Alabama-Tennessee, was revised to reflect the effects of these corrected rates and which continues to show that no mitigation is required.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before April 20, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–9143 Filed 4–19–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-292-000]

Columbia Gas Transmission Corp.; Application

April 14, 1993.

Take notice that on April 8, 1993, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP93–292–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to continue operating six existing natural gas storage fields and related facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to continue operating the following storage fields as presently constituted, and as reflected in the application by maps and operating parameters, such as pressures and capacities.

Field	Location
1. Derricks Creek storage field.	Kanawha County, WV.
2. Donegal storage field.	Washington County, PA.
3. Holbrook storage field.	Greene County, PA.
4. Hunt storage field ..	Kanawha County, WV.
5. Lanham storage field.	Kanawha and Putnam Counties, WV.
6. Rockport storage field.	Jackson, Wirt and Wood Counties, WV.

Columbia states that the purpose of the application is to assure Columbia's ability to condemn exclusive gas storage easements under section 7(h) of the Natural Gas Act, as amended, and thereby protect the integrity of its storage fields. Columbia explains that the filing results from a Court's holding in *Columbia Gas Transmission Corporation* v. *An Exclusive Gas Storage Easement, et al.*, 578 F. Supp. 930 (N.D. Ohio 1983), *affirmed*, 776 F.2d 125 (6th Cir. 1985) that Columbia did not have the right of eminent domain for a certain tract of land in one of its storage fields because it was located outside the geographic area designated on the exhibit maps contained in the application in which Columbia obtained certificate authorization for the storage field.

Columbia states that the initial activation of these six fields occurred during the period 1940 to 1953 and, in many cases, the only well information available was old drillers' logs and original open flow rates. Columbia advises that, therefore, the boundaries of the fields initially were established from mapped dry holes and/or production wells with minimal open flows, evaluation of available drilling/production records and actual subsequent pressure-volume operating experience.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 4, 1993, file with the Federal Energy Regulatory Commission, Washington, DC. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-9142 Filed 4-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-291-000]

Mississippi River Transmission Corp.; Request Under Blanket Authorization

April 14, 1993.

Take notice that on April 8, 1993, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP93-291-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a delivery point to its Rate Schedule CD-1 sales contract with Arkansas Louisiana Gas Company (ALG) under MRT's blanket certificate issued in Docket No. CP82-489-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

MRT states that the proposed delivery point would serve the White Oak Subdivision in Bossier Parish, Louisiana (White Oak). MRT further states that it would supply an estimated 102 MMBtu of natural gas on a peak day, and an estimated 1,000 MMBtu of natural gas on an annual basis at the proposed delivery point.

MRT states that the additional quantity of gas to be provided through the proposed delivery point would not result in an increase in the daily or annual quantities MRT is authorized to deliver to ALG. It is further stated that the deliveries to be made through the proposed point of delivery would be under MRT's currently effective service agreement with ALG under Rate Schedule CD-1.

MRT states that it provides ALG firm delivery of natural gas for resale under its Rate Schedule CD-1 at various delivery points. MRT also delivers gas to ALG at White Oak. MRT further states that the White Oak delivery is authorized by an exchange agreement set forth as Rate Schedule X-12 in MRT's FERC Gas Tariff, Original Volume No. 2. MRT says that since this exchange agreement is scheduled to expire October 31, 1994, MRT and ALG have agreed to add the White Oak delivery point to ALG's CD-1 service agreement to assure continued service to residences in the subdivision. Accordingly, MRT indicates that no additional facilities would be constructed to provide the service which is the subject of this request.

MRT says that its FERC Gas Tariff does not prohibit the addition of new delivery points and that it has sufficient capacity to accomplish the deliveries proposed herein without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-9141 Filed 4-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-5-007]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

April 14, 1993.

Take notice that on April 8, 1993, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheet:

Second Revised Volume No. 1

2nd Substitute Original Sheet No. 153-A

First Revised Volume No. 1-A

Substitute First Revised Sheet No. 422-A
2nd Substitute Fifth Revised Sheet No. 601
2nd Substitute Fifth Revised Sheet No. 602

Northwest states that the purpose of this filing is to update its Index of Shippers and Fuel Reimbursement tariff provisions as required by the Commission's motion rate filing order in the referenced dockets issued on March 26, 1993.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before April 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-9145 Filed 4-6-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-120-000]

Panhandle Eastern Pipe Line Co.; Informal Settlement Conference

April 14, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, April 22, 1993, at 10 a.m. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of discussing the proposed stipulation and agreement in the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Carmen Gastilo at (202) 208-2182 or Joanne Leveque at (202) 208-5705.

Lois D. Cashell,

Secretary.

[FR Doc. 93-9139 Filed 4-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-5-17-000]

Texas Eastern Transmission Corp. Proposed Changes in FERC Gas Tariff

April 14, 1993.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on April 12, 1993 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheet:

62nd Revised Sheet No. 50.2

Texas Eastern states that this sheet is being filed pursuant to Section 4.F of Texas Eastern's Rate Schedules SS-2 and SS-3 to flow through a change in CNG Transmission Corporation's (CNG) Rate Schedule GSS rate which underlies the rates for Texas Eastern's Rate Schedules SS-2 and SS-3.

Texas Eastern states that on March 25, 1993 CNG made a tariff filing in Docket Nos. TQ93-3-22-000 which reduces the Rate Schedule GSS Storage Demand rate effective April 1, 1993.

The proposed effective date of the above tariff sheet is April 1, 1993.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-9140 Filed 4-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-6-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 15, 1993.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on April 8, 1993 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the tariff sheets listed in appendix A to the filing.

The proposed effective date of these revised tariff sheets is April 1, 1993.

Texas Eastern states that these tariff sheets reflect a decrease of $0.524/dth in the demand component of sales rates. Texas Eastern states that the basis of the proposed demand rate reduction is the expiration of gas purchase contracts between Texas Eastern and ProGas Limited (ProGas) dated November 1, 1986 and November 3, 1986. Texas Eastern states that the contracts expired April 1, 1993, and Texas Eastern proposes hereby to flow through to its sales customers this reduction in demand rates concurrently with the elimination of Texas Eastern's obligation to make payments to ProGas.

Texas Eastern states that the proposed reduction in rates herein would result in the flow through of a savings to Texas Eastern's sales customers of approximately $1 million per month. Texas Eastern states that the monthly savings accrues not only to customers making fixed monthly demand payments to Texas Eastern, but also to small customers paying one-part rates based upon the reduced imputed demand component of such one-part rates.

Texas Eastern states that copies of its filing have been served on all Authorized Purchasers of Natural Gas from Texas Eastern, and all applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-9144 Filed 4-19-93; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4616-1]

Clean Air Act Advisory Committee; Special Meeting Cancellation

SUMMARY: On April 6, 1993, the U.S. Environmental Protection Agency (EPA) gave notice of a special meeting of the Subcommittee on Early Reductions and Pollution Prevention of the Clean Air Act Advisory Committee (58 FR 17892).

OPEN MEETING DATE: Notice is hereby given that the meeting scheduled for April 22 and 23, 1993 from 9 a.m. to 4 p.m. at the Carolina Inn, 211 Pittsboro Avenue, Chapel Hill, North Carolina is canceled. The meeting will not be rescheduled.

FOR FURTHER INFORMATION concerning the cancellation of this special meeting of the CAAAC, please contact Dr. Jane Caldwell-Kenkel, Office of Air Quality Planning and Standards, U.S. EPA (919) 541-0328, FAX (919) 541-4028, or by mail at US EPA, Office of Air Quality Planning and Standards, MD-13, Research Triangle Park, North Carolina 27711.

Dated: April 16, 1993.

Michael H. Shapiro,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 93-9333 Filed 4-19-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL 4615-4]

Gulf of Mexico Program Management Committee Meeting

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the Management Committee of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program's Management Committee will hold a meeting on April 27-28, 1993 at the Pontchartrain Hotel in New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Lipka, Acting Director, Gulf of Mexico Program Office, Building 1103, John C. Stennis Space Center, Stennis Space Center, MS 39529-6000, at (601) 688-3726.

SUPPLEMENTARY INFORMATION: A meeting of the Management Committee of the Gulf of Mexico Program will be held on April 27-28, 1993, at the Pontchartrain Hotel in New Orleans, Louisiana from 8:30 a.m. to 5 p.m. on April 27 and from 8:30 a.m. to 12 noon on April 28. Agenda items will include: Issue committee co-chair and membership appointments; Success in '93 proposed project awards; site selection for 1994–95 Symposium; Gulf of Mexico Business Council; Gulf of Mexico Program Office proposed Interagency Associate Director roles; FY94 planning; Public Health Action Agenda outreach; and Five Year Strategy. The meeting is open to the public.

Tudor L. Davies,

Acting Assistance Administrator, Office of Water.

[FR Doc. 93-9196 Filed 4-19-93; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-44597; FRL-4582-3]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on pentabromodiphenyl oxide (CAS No. 32534-81-9), submitted pursuant to a final test rule. Test data were also submitted on 4-vinylcyclohexene (4-VCH) (CAS No. 100-40-3) pursuant to a testing consent order. All test data were submitted under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for pentabromodiphenyl oxide were submitted by the Great Lakes Chemical Corporation and Ameribrom, Inc., pursuant to a test rule at 40 CFR part 766. They were received by EPA on March 24, 1993. These submissions describe the analytical protocol for the determination of polybrominated dibenzo-p-dioxins and dibenzofurans by high-resolution gas chromatography/medium high-resolution mass spectrometry.

Test data for 4-VCH were submitted by the Chemical Manufacturers Association Butadiene Panel on behalf of the test sponsors and pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on March 22, 1993. The submission describes the partition coefficients of 4-VCH and metabolites. This chemical is used as an intermediate in the manufacture of 4-vinylcyclohexene mono- and diepoxides, which are used to make epoxy resins, polyesters, coatings, and plastics; and may also be used in the manufacture of flame retardants, insecticides, plasticizers, and antioxidants.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS-44597). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office, rm. ET-G102, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: April 12, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93-9192 Filed 4-19-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Inter-American Freight Conference, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-009648A-060

Title: Inter-American Freight Conference

Parties: Empresa de Navegacao, Alianca S.A., Frota Amazonica S.A., Columbus Line, Transroll/Sea-Land Joint Service, A. Bottacchi S.A. de Navegacion C.F.I.e I, Crowley American Transport, Inc., A/S Ivarans Rederi d/b/a Ivaran Lines, Companhia Maritima Nacional, Companhia de Navegacao Lloyd Brasileiro, Companhia de Navegacao Maritima Netumar, Empresa Lineas Maritimas Argentinas

Synopsis: The proposed amendment modifies the Agreement's voting procedures on actions taken at meetings held by the members. It also expands the space chartering and sailing authority to sections B and D of the Agreement.

Agreement No.: 202-010689-054

Title: Transpacific Westbound Rate Agreement

Parties: American President Lines, Ltd., Hapag Lloyd AG, Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Neptune Orient Lines, Ltd., Nippon Yusen Kaisha, Ltd., Orient Overseas Container Line, Inc., Sea-Land Service, Inc.

Synopsis: The proposed amendment revises the rules governing independent action.

Dated: April 14, 1993.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93-9131 Filed 4-19-93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[File No. 922 3056]

Gracewood Fruit Company; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require,

among other things, a Florida corporation to have competent and reliable scientific evidence to substantiate future claims that eating normal quantities of grapefruit provides a variety of health benefits, such as reducing serum cholesterol and the risk of stroke, heart attack, and several types of cancer. Also, the respondent would be prohibited from misrepresenting any test or study in connection with the marketing of any food.

DATES: Comments must be received on or before June 21, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lee Peeler or Anne Maher, FTC/S-4002, 6th St. & Pa. Ave., NW., Washington, DC 20580. (202) 326-3090 or 326-2987.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

In Matter of Gracewood Fruit Company, a corporation.

The Federal Trade Commission has initiated an investigation of certain acts and practices of Gracewood Fruit Company, a corporation ("Gracewood" or "proposed respondent") and it now appearing that proposed respondent is willing to enter into an agreement to cease and desist from the use of certain acts and practices being investigated,

It is hereby agreed, By and between Gracewood, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Gracewood is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its offices and principal place of business located at 1626-90th Avenue, City of Vero Beach, State of Florida.

2. Proposed respondent admits all jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All rights under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record in the proceedings unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of the agreement and so notify the respondent, in which event it will take such action as it may consider appropriate and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as has been alleged in the attached draft complaint, or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) Issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this Order the "Physicians' Health Study" means the study by Gaziano, Manson, Ridker, Buring, Hennekens, Beta Carotene Therapy for Chronic Stable Angina, reported in abstract before the November 12-15 1990 convention of the American Heart Association.

For purposes of this Order the "University of Florida Studies" means the studies reported as Cerda, Robbins, Burgin, Baumgartner, Rice, The Effects of Grapefruit Pectin on Patients at Risk for Coronary Heart Disease Without Altering Diet or Lifestyle, 11 Clinical Cardiology 589 (1988); Cerda, The Role of Grapefruit Pectin in Health and Disease, 99 Transactions Am. Clinical and Climatological A. 203 (1987); Baeky, Cerda, Burgin, Robbins, Rice, Baumgartner, Grapefruit Pectin Inhibits Hypercholesterolemia and Atherosclerosis in Miniature Swine, 11 Clinical Cardiology 595 (1988); Normann, Cerda, Burgin, Robbins, Sullivan, Grapefruit Pectin Inhibits Atherosclerosis in Microswine with Prolonged Hypercholesterolemia, 5(5) FASEBJ A1252, #5112 (1991); and Sullivan, Cerda, Burgin, Robbins, Normann, Grapefruit Pectin Reduces Plasma Total Cholesterol, LDL Cholesterol, and Retards Atherosclerosis in Microswine with Prolonged Hypercholesteremia, 39(2) Clinical Res. 656A (1991).

I

It is Ordered, That respondent Gracewood Fruit Company, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any food in or affecting commerce, as "commerce" and "food" are defined in the Federal Trade

Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Eating normal quantities of grapefruit significantly lowers serum cholesterol or low density lipoproteins ("LDL");

B. Eating normal quantities of grapefruit significantly helps keep arteries free of cholesterol plaque;

C. Eating normal quantities of grapefruit significantly reduces the risk of stroke or heart attack for consumers;

D. Eating normal quantities of grapefruit significantly lowers the risk of cancers of the mouth, throat, stomach, lungs, colon or esophagus; or

E. Eating any fruit has a favorable impact on any physiological function or risk factor for a disease, or any other health benefit;

unless at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation; provided, however, that any such representation that is specifically permitted in labeling for such food product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990 will be deemed to have a reasonable basis as required by this paragraph. For purposes of this Order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

II.

It is further ordered, That respondent Gracewood Fruit Company, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any food in or affecting commerce, as "commerce" and "food" are defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. The University of Florida Studies demonstrate that eating normal quantities of grapefruit significantly lowers both serum cholesterol and low density lipoproteins ("LDL");

B. The University of Florida Studies demonstrate that eating normal quantities of grapefruit significantly helps keep arteries free of cholesterol plaque;

C. The Physicians' Health Study demonstrates that eating normal quantities of grapefruit reduces by one half the risk of stroke and heart attack for consumers with previous cardiovascular problems.

III.

It is further ordered, That respondent Gracewood Fruit Company, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with advertising, promotion, offering for sale, sale or distribution of any food in or affecting commerce, as "commerce" and "food" are defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test or study.

IV.

It is further ordered, That for five (5) years after the last date of last dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All test reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V.

It is further ordered, That respondent shall distribute a copy of this Order to each of its operating divisions, to each of its managerial employees, and to each of its officers, agents, representatives, or employees engaged in the preparation or placement of advertising or other material covered by this Order and shall secure from such person a signed statement acknowledging receipt of this Order.

VI.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

VII.

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this Order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the requirements of this Order.

Analysis of Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Gracewood Fruit Company (Gracewood), a Florida corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the agreement's proposed order.

According to the proposed complaint this matter concerns two advertisements for Gracewood's grapefruit that discuss the health benefits of eating grapefruit. Claims as to specific health benefits are made in the context of advertisements that make unqualified statements regarding pool health and health benefits.

The Commission's proposed complaint alleges that Gracewood's advertising made four unsubstantiated claims: (1) That eating normal quantities of grapefruit significantly lowers both serum cholesterol and low density lipoproteins ("LDL"); (2) that eating normal quantities of grapefruit significantly helps keep arteries free of cholesterol plaque; (3) that eating normal quantities of grapefruit reduces by one half the risk of stroke and heart attack for consumers with previous cardiovascular problems, and (4) that eating normal quantities of grapefruit significantly lowers the risk of cancers of the mouth, throat, stomach, lungs, colon and esophagus. According to the complaint, Gracewood falsely represented that these claims were supported by a reasonable basis.

The proposed complaint further charges that Gracewood falsely represented that specified University of Florida studies demonstrate that eating normal quantities of grapefruit significantly lowers both serum cholesterol and LDLs. In fact, the proposed complaint alleges, this is not true because, among other reasons, the studies were based on clinical trials conducted with concentrated pectin with a higher ratio of soluble to insoluble fiber than that found in unconcentrated grapefruit pectin, with pectin levels higher than those found in a grapefruit, and upon individuals with elevated cholesterol levels. In addition, the proposed complaint charges that Gracewood falsely represented that the University of Florida studies demonstrate that eating normal quantities of grapefruit significantly helps keep arteries free of cholesterol plaque. In fact, the proposed complaint alleges, this is not true because, among other reasons, the University of Florida Studies were based on clinical trials conducted on pigs fed a very high fat diet, and given very high levels of pectin.

Finally, the proposed complaint charges that Gracewood falsely represented that the Physicians' Health Study demonstrates that eating normal quantities of grapefruit reduces by one half the risk of stroke and heart attack for consumers with previous cardiovascular problems. In reality, the proposed complaint alleges, this is not true because, among other reasons, the subjects in the Physicians' Health Study consumed substantially higher levels of beta carotene than those found in a grapefruit.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the Gracewood from engaging in similar acts and practices in the future.

Part I of the proposed consent order prevents Gracewood from making the following four claims in any advertising for any food, unless the claim is substantiated by competent and reliable scientific evidence: (1) That eating normal quantities of grapefruit significantly lowers serum cholesterol or LDLs; (2) that eating normal quantities of grapefruit significantly helps keep arteries free of cholesterol plaque; (3) that eating normal quantities of grapefruit significantly reduces the risk of stroke or heart attack for consumers; and (4) that eating normal quantities of grapefruit significantly lowers the risk of cancers of the mouth, throat, stomach, lungs, colon, or esophagus. The substantiation provision also contains a fencing-in provision that prevents Gracewood from claiming that eating any fruit has a favorable impact on any physiologic function or risk factor for a disease, or any other health benefit, without having a reasonable basis for the claim. The proposed order provides a safe harbor for claims that are specifically permitted in labeling by the Food and Drug Administration under the Nutrition Labeling and Education Act of 1990 will be deemed to have a reasonable basis under the order.

Part II of the proposed consent order requires that Gracewood cease and desist from misrepresenting, in any manner, directly or by implication, with respect to any food: (1) That specified University of Florida studies demonstrate that eating normal quantities of grapefruit significantly lowers both serum cholesterol and low density lipoproteins ("LDL"); (2) that the University of Florida studies demonstrate that eating normal quantities of grapefruit significantly helps keep arteries free of cholesterol plaque; and (3) the Physicians' Health Study demonstrates that eating normal quantities of grapefruit reduces by one half the risk of stroke and heart attack for consumers with previous cardiovascular problems.

The final substantive provision of the order prevents Gracewood from misrepresenting in any way, with respect to any food, the existence, contents, validity, results, conclusions or interpretations of any test or study.

Under the proposed order Gracewood must also maintain materials relied upon to substantiate the claims covered by the order, to distribute copies of the order to certain company officials, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 93-9189 Filed 4-19-93; 8:45 am]

BILLING CODE 6750-01-M

[File No. 902-3394]

The Right Start, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a California-based mail-order company, and its president, from making false and unsubstantiated advertising claims in the future regarding the "Air Purifier," a small electric air filter, and the "Travel Tray," a foam board tray that is used to hold children's snacks and toys when they are riding in an automobile.

DATES: Comments must be received on or before June 21, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker, Chicago Regional Office, Federal Trade Commission, 55 East Monroe Street, suite 1437, Chicago, Illinois 60603, (312) 353-8156.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Right Start, Inc., a corporation, and Stanley M. Fridstein, individually and as an officer of said corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of The Right Start, Inc. ("Right Start"), a corporation, and Stanley M. Fridstein, individually and as an officer of said corporation ("proposed respondents"), and it now appearing that the proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Right Start and Stanley M. Fridstein, and counsel for the Federal Trade Commission that:

1. Proposed respondent Right Start is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business

located at 5334 Sterling Center Drive, Thousand Oaks, California 91361.

2. Proposed respondent Stanley M. Fridstein is an officer of Right Start. Individually or in concert with others he formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices alleged in the draft of the complaint attached hereto. His principal office or place of business is the same as that of the corporate respondent.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of the complaint attached hereto.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than the jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered, That respondents Right Start, a corporation, its successors and assigns, and its officers, and Stanley M. Fridstein, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, or distribution of any air filtering device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that use of any such product can: (1) Reduce the risk of bacterial infection, or (2) alleviate, prevent or cure respiratory problems, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this Order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

II

It is further ordered, That respondents Right Start, a corporation, its successors and assigns, and its officers, and Stanley M. Fridstein, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, or distribution of any product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such product has been recommended, approved or endorsed by a person, group, or public or private organization that is an expert with respect to the endorsement message unless the recommendation, approval or endorsement is supported by an objective and valid evaluation or test of the product conducted by persons qualified to do so, using procedures generally accepted by experts in the science or profession to yield accurate and reliable results.

III

It is further ordered, That for three (3) years after the date of the last dissemination of any representations covered by this Order, respondents, or their successors and assigns, shall maintain in written form and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that come into their possession from a vendor or any other source and that were relied upon in disseminating such representation; and,

B. All materials, tests, reports, studies, surveys, demonstrations or other evidence which come into their possession or control from a vendor or any other source that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered, That respondents shall, within thirty (30) days after the date of service upon them of this Order, and for three (3) years thereafter, distribute a copy of this Order to each current and future officer, employee, agent and/or representative engaged in the preparation or placement of advertising or other promotional materials covered by this Order and shall obtain from each such person a signed statement acknowledging receipt of the Order.

V

It is further ordered, That respondents and their successors and assigns shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising under this Order and that respondents shall require, as a condition precedent to the closing of any sale or other disposition of all or a substantial part of their assets, that the acquiring party file with the Commission, prior to the closing of such sale or other disposition, a written agreement to be bound by the provisions of the Order.

VI

It is further ordered, That for a period of five (5) years from the date of service of this Order, the individual respondent named herein shall promptly notify the Commission in the event of the discontinuance of his present business or employment and of each affiliation with a new business or employment, each such notice to include the individual respondent's new business address and a statement of the nature of the business or employment in which said respondent is newly engaged as well as a description of said respondent's duties and responsibilities in connection with the business or employment.

VII

It is further ordered, That respondents shall, within sixty (60) days after service upon it of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the requirements of this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a Consent Order from The Right Start, Inc., a California corporation with its principal place of business in California, and Stanley M. Fridstein, individually and as an officer of The Right Start, Inc., (the "respondents").

The proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the proposed Order contained in the agreement.

This matter concerns claims made for respondents' Air Purifier and Travel Tray. The Complaint accompanying the proposed Consent Order alleges, in part, that the respondents engaged in unfair or deceptive acts or practices in violation of section 5 of the Federal Trade Commission Act. According to the Complaint, the respondents represented that the Air Purifier is recommended by Good Housekeeping magazine as an effective product for removing allergens from the air, that use of the Air Purifier can significantly reduce a child's risk of bacterial infection, and that the negative ions the Air Purifier emits alleviate respiratory problems. The Complaint further alleges the respondents represented that the Travel Tray has been evaluated by the Consumer Product Safety Commission and found to be safe for use in automobiles for children 18 months and older.

The Complaint alleges that these various representations are false and misleading in violation of section 5 of the FTC Act. In addition, the Complaint alleges that the efficacy claims regarding the Air Purifier are unsubstantiated.

The Consent Order contains provisions designed to prevent the respondents from engaging in similar allegedly illegal acts and practices in the future.

Specifically, Provision I of the Order prohibits the representations that use of any air filtering device can reduce the risk of bacterial infection or alleviate, prevent or cure respiratory problems unless such results can be substantiated by competent and reliable scientific evidence.

Provision II of the Order prohibits representations that any product has been approved or endorsed by any individual or organization that is an expert with respect to the endorsement message unless the endorsement is supported by an objective and valid evaluation or test of the product conducted by persons qualified to do so.

Provision III of the Order is a recordkeeping requirement for substantiation of claims and representations.

Provision IV of the Order requires that the Order be distributed to all personnel engaged in the preparation of advertisements.

Provisions V and VI of the Order require the corporate and individual respondents to provide the FTC with notification of changes in business affiliations and structure as may be necessary to insure compliance with the Order.

Provisions VII of the Order requires the respondents to file compliance reports with the FTC.

Donald S. Clark,

Secretary.

[FR Doc. 93-9187 Filed 4-19-93, 8:45 am]

BILLING CODE 6750-01-M

[File No. 902 3273]

The Sharper Image Corporation, et al; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, the consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a San Francisco-based retail chain and mail order company and its president from making false or unsubstantiated advertising claims for a telephone tap detector, an exercise device, and an antifatigue nutritional supplement or similar products in the future.

DATES: Comments must be received on or before June 21, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker, Chicago Regional Office, Federal Trade Commission, 55 East Monroe Street, suite 1437, Chicago, Illinois 60603, (312) 353-8156.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with

§ 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Sharper Image Corporation, a corporation, and Richard Thalheimer, individually and as an officer of said corporation ("proposed respondents"), and it now appearing that the proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Sharper Image Corporation and Richard Thalheimer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Sharper Image Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 650 Davis Street, San Francisco, California 94111.

2. Proposed respondent Richard Thalheimer is an officer of Sharper Image Corporation. Individually or in concert with others he formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices alleged in the draft of the complaint attached hereto. His principal office or place of business is the same as that of the corporate respondent.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of the complaint attached hereto.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondents Sharper Image Corporation, a corporation, its successors and assigns, and its officers and directors; and Richard Thalheimer, individually and as an officer and director of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, or distribution of the Tap Detector V (previously known as the "Privacy Protector"), or any substantially similar product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Any such product will prevent any extension telephone from interfering with a data transmission on any other phone; or

B. Any such product is more effective in detecting taps on a telephone line than an inspection of the phone system by a detective.

II

It is further ordered that respondents Sharper Image Corporation, a corporation, its successors and assigns, and its officers and directors; and Richard Thalheimer, individually and as an officer and director of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, or distribution of the Chest Maximizer, or any exercise product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. The use of the Chest Maximizer will produce three times the results that a person would get by doing fewer regular push ups off the floor; or

B. Such product can achieve any result superior or comparable to that achieved with any other product or exercise;

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. For purposes of this Order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III

It is further ordered that respondents Sharper Image Corporation, a corporation, its successors and assigns, and its officers and directors; and Richard Thalheimer, individually and as an officer and director of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that:

A. The FCC has approved the Tap Detector as effective;

B. Essential Factors with Oxy-Energizer has been accepted by the United States Government, or any agency or division thereof, as effective for relieving fatigue or providing extra energy; or

C. Any such product has been accepted or approved by the United States Government, or any agency or division thereof, as effective.

IV

It is further ordered that for five (5) years after the date of the last dissemination of any representations covered by this Order, respondents, or their successors and assigns, shall maintain in written form and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials which come into their possession from a vendor or any other source and that were relied upon in disseminating such representation; and

B. All materials, tests, reports, studies, surveys, demonstrations or other evidence which come into their possession or control from a vendor or any other source that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V

It is further ordered that respondents shall, within thirty (30) days after the date of service upon them of this Order, and for three (3) years thereafter, distribute a copy of this Order to each current and future officer, employee, agent and/or representative engaged in the preparation or placement of advertising or other promotional materials covered by this Order and shall obtain from each such person a signed statement acknowledging receipt of the Order.

VI

It is further ordered that respondents and their successors and assigns shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising under this Order and that respondents shall require, as a condition precedent to the closing of any sale or other disposition of all or substantial part of their assets, that the acquiring party file with the Commission, prior to the closing of such sale or other disposition, a written agreement to be bound by the provisions of the Order.

VII

It is further ordered that for a period of five (5) years from the date of service of this Order, the individual respondent named herein shall promptly notify the Commission in the event of the discontinuance of his present business or employment and of each affiliation with a new business or employment which involves the retail sale of consumer products through mail order catalogs, each such notice to include the individual respondent's new business address and a statement of the nature of the business or employment in which said respondent is newly engaged as well as a description of said respondent's duties and responsibilities in connection with the business or employment.

VIII

It is further ordered that respondents shall, within sixty (60) days after service upon it of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the requirements of this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a Consent Order from Sharper Image Corporation, a Delaware corporation with its principal place of business in California, and Richard Thalheimer, individually and as an officer of Sharper Image Corporation, (the "respondents"). Under this agreement, the respondents will cease and desist from making certain claims for the Tap Detector V or any substantively similar product, will cease and desist from making certain claims for the Chest Maximizer or any exercise product unless they have competent and reliable scientific evidence that substantiates such claims, and will cease and desist from misrepresenting that the United States Government has approved any product as effective.

The proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the proposed Order contained in the agreement.

This matter concerns claims made for respondent's Tap Detector V telephone tap detection product, Chest Maximizer exercise product, and Essential Factors with Oxy-Energizer food supplement product. The Complaint accompanying the proposed Consent Order alleges, in part, that the respondents engaged in unfair or deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act. According to the Complaint, the respondents represented that The Tap Detector V would prevent extension phones from interfering with transmissions on any other phone, was approved by the FCC as effective, and was more effective in detecting taps than an inspection by a detective. The Complaint further alleges the respondents represented that the United States Government has accepted the active ingredient in Essential Factors as effective for relieving fatigue and providing extra energy, and that the respondents had a reasonable basis for making the statement that the use of the Chest Maximizer would produce three times the results of regular push ups while doing fewer repetitions.

The Complaint alleges that these various representations are false and misleading or unsubstantiated, in violation of Section 5 of the FTC Act.

The Consent Order contains provisions designed to prevent the respondents from engaging in similar allegedly illegal acts and practices in the future.

Specifically, Provision I of the Order bans representations that the Tap Detector, or any substantially similar product, will prevent any interference from any phone with data transmission on another phone, or is more effective in detecting taps than an inspection by a detective.

Provision II of the Order prohibits representations that by using the Chest

Maximizer one can achieve three times the results doing fewer pushups, unless such claims can be substantiated by competent and reliable scientific evidence. As a fencing in measure, this provision also prohibits representations that any exercise product is superior to any other exercise product or exercise, unless the claim can be substantiated by competent and reliable scientific evidence.

Provision III of the Order prohibits misrepresenting that the FCC, the United States government, or any agency or division thereof, has approved or accepted any product as effective.

Provision IV of the Order is a recordkeeping requirement for substantiation of claims and representations.

Provision V of the Order requires that the Order be distributed to all personnel engaged in the preparation of advertisements.

Provisions VI and VII of the Order require the corporate and individual respondents to provide the FTC with notification of changes in business affiliations and structure as may be necessary to ensure compliance with the Order.

Provision VIII of the Order requires the respondents to file compliance reports with the FTC.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 93-9188 Filed 4-19-93; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research; Notice of Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (Title 5, U.S.C., Appendix 2) announcement is made of the following advisory committee scheduled to meet during the month of May 1993:

Name: Health Services Research Training Advisory Committee.

Date and Time: May 7, 1993, 8 a.m.

Place: Parklawn Conference Center, Conference Room O, 5600 Fishers Lane, Rockville, Maryland 20857.

Open May 7, 8 a.m. to 8:30 a.m.; Closed for remainder of meeting.

Purpose: The Committee is charged with conducting the initial review of grant applications from educational institutions, individuals, or organizations for Federal support to ensure that highly-trained scientific personnel will be available in adequate numbers and in the appropriate research areas and fields to maintain the nation's health services research agenda.

Agenda: The open session on May 7 from 8 a.m. to 8:30 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Deputy Administrator, Agency for Health Care Policy and Research (AHCPR). The closed session of the meeting will be devoted to a review of research training grant applications. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C. 552b(c)(6), the Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of meeting, or other relevant information should contact Mrs. Linda Blankenbaker, Agency for Health Care Policy and Research, Executive Office Center, suite 602, 2101 E. Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227-8449.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: April 13, 1993.

J. Jarrett Clinton, M.D.,

Administrator.

[FR Doc. 93-9164 Filed 4-19-93; 8:45 am]

BILLING CODE 4160-90-U

Administration for Children and Families

Office of Family Assistance; Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for the reinstatement of a previously approved information collection titled: "Fraud Activity Report in Administering the Aid to Families with Dependent Children (AFDC) Program". This report expired on January 31, 1993 under previously approved OMB Control Number 0970-0031.

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, Administration for Children and Families, by calling (202) 401-6964.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch; New Executive Office Building, room 3302, 725 17th Street NW., Washington, DC 20503 (202) 395-7316.

Information on Document

Title: Fraud Activity Report in Administering the Aid to Families With Dependent Children (AFDC) Program

OMB No.: 0970-0031

Description: This information collection is authorized by Section 45 U.S.C. 205.110 and 402(a)(6) of the Social Security Act. Regulatory authority for this information collection is granted in 45 CFR 235.110. This information collection is used to provide information on administrative and legal actions taken by State Public Assistance agencies of recipient fraud in programs for aid and services to needy families with children.

This information will be used to respond to inquiries by Congressional committees, the office of the Inspector General, Office of Program Integrity, the Office of Family Assistance and social welfare organizations. This is the only source of information on State performance in meeting State plan requirements for detecting and adjudicating unfair and fraudulent practices in public welfare.

Annual Number of Respondents	54
Annual Frequency	1
Average Burden Hours Per Response	8
Total Burden Hours	432

Dated: March 26, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93-9169 Filed 4-19-93; 8:45 am]

BILLING CODE 4130-01-M

Centers for Disease Control and Prevention

[Announcement Number 319]

State and Community-Based Childhood Lead Poisoning Prevention Program; Notice of Availability of Funds for Fiscal Year 1993

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of grant funds in Fiscal Year 1993 for both the initiation of new and continuation of currently funded state and community-based childhood lead poisoning prevention programs that (1) screen infants and young children and identify those with elevated blood lead levels, (2) identify possible sources of lead exposure, (3) monitor medical and environmental management of lead poisoned children, (4) provide information on childhood lead poisoning, its prevention and management, to the public, health professionals, and policy- and decision-makers, and (5) encourage community action programs directed to the goal of eliminating childhood lead poisoning.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under sections 301(a) (42 U.S.C. 241(a)) and 317A (42 U.S.C. 247b-1) of the Public Health Service Act, as amended. Program regulations are set forth in title 42, Code of Federal Regulations, part 51b.

Eligible Applicants

Eligible applicants are state health departments or other state health agencies or departments deemed most appropriate by the state to direct and coordinate the state's childhood lead poisoning prevention program, and agencies or units of local government that serve jurisdictional populations greater than 500,000. This eligibility includes health departments or other official organizational authority (agency or instrumentality) of the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States. Also eligible are federally recognized Indian Tribal governments.

If a state agency applying for grant funds is other than the official state health department, written concurrence by the state health department must be provided.

Availability of Funds

Approximately $1,500,000 will be available to fund approximately 4 new childhood lead poisoning prevention programs. The CDC anticipates that program awards for the first budget year will range from $200,000 to $500,000. The new awards are expected to begin on or about July 1, 1993. Awards are made for 12-month budget periods within project periods not to exceed 5 years. Estimates outlined above are subject to change based on the actual availability of funds and the scope and quality of applications received. Currently, 31 state and local programs are recipients of grant funds for this program. These 31 projects are expected to be awarded approximately $18,500,000 in non-competing continuations. Non-competing continuation applications within an approved project period will be evaluated on satisfactory progress in meeting project objectives as determined by site visits from CDC representatives, progress reports, the quality of future program plans, and the availability of funds.

These grants are intended to develop, expand, or improve prevention programs in communities with demonstrated high-risk populations. Grant awards cannot supplant existing funding for childhood lead poisoning prevention programs or activities. Grant funds should be used to increase the level of expenditures from state, local, and other funding sources for childhood lead poisoning prevention. Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application; however applicants must perform a substantial portion of the activities for which funds are requested.

Awards will be made with the expectation that program activities will continue if and when grant funds are terminated at the end of the project period.

At the request of the applicant, Federal personnel may be assigned to a project in lieu of a portion of the financial assistance.

Note:

- Grant funds may not be expended for medical care and treatment or for environmental remediation of lead sources. However, the applicant must provide an acceptable plan to ensure that these program activities are appropriately carried out.
- Not more than 10 percent of any grant may be obligated for administrative costs. This 10 percent limitation is in lieu of, and replaces the indirect cost rate.

Purpose

State and community health agencies are the principal delivery points for childhood lead screening and related medical and environmental management activities; however, limited resources have made it difficult for agencies to develop and maintain programs for the elimination of this totally preventable disease. This grant program will provide financial assistance and support to state and community-based government agencies to:

A. Establish, expand, or improve screening services in communities with children at high risk for lead poisoning. Emphasis should be on intensive community screening to reach children not currently served by existing health care services. When possible, screening efforts should be integrated with maternal and child health programs; State Medicaid programs, such as the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) programs; community and migrant health centers; and community-based organizations providing health and social services in or near public housing units, as authorized under Section 340A of the PHS Act.

B. Intensify case management efforts to ensure that children with lead poisoning receive appropriate and timely follow-up services.

C. Establish, expand, or improve environmental investigations to rapidly identify and reduce sources of lead exposure.

D. Develop infrastructure to implement the provisions of the CDC Lead Statement, Preventing Lead Poisoning in Young Children (October 1991).

E. Develop and implement efficient information management/data systems compatible with CDC guidelines for monitoring and evaluation.

F. Improve the actions of other appropriate agencies and organizations to facilitate the rapid remediation of identified lead hazards in high risk communities.

G. Enhance knowledge and skills of program staff through training and other methods.

H. Based upon program findings, provide information on childhood lead poisoning to the public, policy-makers, the academic community, and other interested parties.

In summary, the purpose of this grant program is to provide impetus for development, operation, and institutionalization of state and community-based childhood lead poisoning prevention programs. Grant-supported programs are expected to serve as catalysts and models for the development of non-grant-supported programs and activities in other states and communities. Further, grant-supported programs should create community awareness of the problem (e.g., among community and business leaders, medical community, parents, educators, and property owners). It is expected that state health agencies will play a lead role in the development of community-based childhood lead poisoning prevention programs, including assuring coordination and integration with maternal and child health programs; State Medicaid EPSDT programs; community and migrant health centers; and community-based organizations providing health and social services in or near public housing units, as authorized under section 340A of the PHS Act.

Program Requirements

The following are requirements for Childhood Lead Poisoning Prevention Projects:

A. A full-time director/coordinator with authority and responsibility to carry out the requirements of the program.

B. Ability to provide qualified staff, other resources, and knowledge to implement the provisions of the program.

C. A plan to develop or improve capacity to collect and analyze data and ensure: (1) Reporting to the appropriate health agency all children screened and those found with elevated blood lead levels by private and public laboratories; (2) ensuring appropriate follow-up of such children; (3) routine analyses of data on children with elevated blood lead levels.

D. A plan to monitor and evaluate all major program activities and services.

E. Demonstrated experience or access to professionals knowledgeable in conducting and evaluating public health programs.

F. Ability to translate program findings to state and local public health officials, policy and decision-makers, and to others seeking to strengthen program efforts.

G. Information which describes why certain communities were selected for screening activities, including information on housing conditions, income, other socioeconomic factors, and previous surveys or screening activities for childhood lead poisoning prevention.

H. A comprehensive public and professional information and education outreach plan directed specifically to high-risk populations, health professionals and para-professionals and the public. In addition, the plan should also address education and outreach activities directed to policy and decision-makers, parents, educators, property owners, community and business leaders, housing authorities and housing and rehabilitation workers, and special interest groups.

I. Effective, well-defined working relationships within public health agencies and with other agencies and organizations at national, state, and community levels (e.g., housing authorities, environmental agencies, maternal and child health programs, State Medicaid EPSDT programs; or, community and migrant health centers; community-based organizations providing health and social services in or near public housing units, as authorized under section 340A of the PHS Act, state epidemiology programs, state and local housing rehabilitation offices, schools of public health and medical schools, and environmental interest groups) to appropriately address the needs and requirements of programs (e.g., data management systems to facilitate the follow-up and tabulation of children reported with elevated blood lead levels, training to ensure the safety of abatement workers) in the implementation of proposed activities. This includes the establishment of networks with other state and local agencies with expertise in childhood lead poisoning prevention programming.

J. Activities, services, and educational materials provided by the program must be culturally sensitive (i.e., program and services provided in a style and format respectful of cultural norms, values, and traditions which are endorsed by community leaders and accepted by the target population), developmentally appropriate (i.e., information and services provided at a level of comprehension which is consistent with learning skills of individuals to be served), linguistically-specific (i.e., information is presented in dialect and terminology consistent with the target population's native language and style of communication), and educationally appropriate.

K. A plan to ensure continuation of the childhood lead poisoning prevention program beyond expiration of grant support.

L. For awards to state agencies, there must be a demonstrated commitment to provide technical, analytical, and program evaluation assistance to local agencies interested in developing or strengthening childhood lead poisoning prevention programs.

REQUIREMENT regarding medicaid provider-status of applicants: Pursuant to section 317A of the Public Health Service Act (42 U.S.C. 247b–1) as amended by section 303 of the "Preventive Health Amendments of 1992" (Pub. L. 102–531), applicants AND current grantees must meet the following requirements:

For CLPPP services which are Medicaid-reimbursable in the applicant's state:

- Applicants who directly provide these services must be enrolled with their state Medicaid agency as Medicaid providers.
- Providers who enter into agreements with the applicant to provide such services must be enrolled with their state Medicaid agency as providers.

An exception to this requirement will be made for providers whose services are provided free of charge and who accept no reimbursement from any third-party payer. Such providers who accept voluntary donations may still be exempted from this requirement.

The application must provide evidence that the above requirements are being met.

Evaluation Criteria

The review of new, competing applications will be conducted by an objective review committee. The major factors to be considered in the evaluation of responsive applications are:

1. *Evidence of the Childhood Lead Poisoning Problem* (20%)

The applicant's ability to identify populations and communities at high-risk, as defined by data from previous screening efforts, environmental data, and/or demographic data.

2. *Understanding the Problem* (10%)

The applicant's understanding of the requirements, objectives, and complexities of and interactions required for a successful program.

3. *Program Personnel* (15%)

The extent to which the proposal has described (a) the qualifications and commitment of the applicant, (b) detailed allocations of time and effort of staff devoted to the project, (c) information on how the applicant will develop, implement and administer the program, and (d) the qualifications of the support staff.

4. *Technical Approach* (30%)

The overall balance of the program design in comparison to competing applications, and measured in terms of intensive screening, medical management, lead hazard remediation, education and outreach and evaluation activities. The adequacy of the program design includes (a) a balance between the number of high-risk children screened and the programs ability to assure provision of case management in compliance with CDC guidelines (Preventing Lead Poisoning in Young Children, October 1991) and (b) the extent to which the evaluation plan can be used to effectively measure progress towards the stated objectives.

5. *Collaboration* (20%)

The applicant should demonstrate the ability to collaborate with political subdivisions of states in developing childhood lead poisoning prevention programs and collaboration with other program-related entities.

6. *Plans To Become Self-sustaining* (5%)

An explanation of how program services will be continued after the end of the project period, which includes identifying other sources of support during the project period. By the end of the second budget year, grantees must have concrete plans to ensure institutionalization of the program after termination of grant support.

7. *Budget Justification and Adequacy of Facilities* (Not Scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant funds. The adequacy of existing and proposed facilities to support program activities also will be evaluated.

Non-competing continuation applications within an approved project period will be evaluated on satisfactory progress in meeting project objectives as determined by site visits from CDC representatives, progress reports, the quality of future program plans, and the availability of funds.

Executive Order 12372 Review

The intergovernmental review requirements of Executive Order 12372, as implemented by DHHS regulations in 45 CFR part 100, are applicable to this program. Executive Order 12372 provides a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert the SPOC to the prospective applications and to receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305. The due date for state process recommendations is 60 days after the application deadline date for new and competing continuation awards. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.197.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this grant program will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

All applicants should follow the guidance provided in PHS form 5161-1 (Revised 3/89) in preparing grant applications.

For New Applicants, the application deadline is April 26, 1993.

For Non-Competing Continuation Applicants, the application deadline is April 26, 1993.

The original and two copies must be submitted on or before the application deadline to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305.

A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of grant program, project title, organization, name and address, project director and telephone number. This abstract should be included in the "Application Content" section of the application, under "Introduction."

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures and an application package may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, GA 30305, (404) 842-6630. Please refer to Announcement Number 319 when requesting information and submitting any application.

Technical assistance may be obtained from David L. Forney, Chief, Program Services Section, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway NE., Mailstop F-42, Atlanta, GA 30341-3724, (404) 488-7330.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone (202) 783-3238).

Dated: April 14, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-9154 Filed 4-19-93; 8:45 am]

BILLING CODE 4160-18-P

Twenty-Seventh National Immunization Conference; Meeting

The National Center for Prevention Services (NCPS) of the Centers for Disease Control and Prevention (CDC) will convene a meeting of federal, state, and local public health officials, as well as representatives from the public and private sector, who are involved in the organization and implementation of immunization activities.

Name: Twenty-seventh National Immunization Conference.

Times and Dates: Registration, 12 noon–6 p.m., June 13, 1993; 7:30 a.m.–6 p.m., June 14, 1993; and throughout the conference. Meeting, 8:30 a.m.–6 p.m., June 14, 1993 8 a.m.–5:30 p.m., June 15, 1993 8:30 a.m.–5 p.m., June 16, 1993; 8:30 a.m.–5 p.m., June 17, 1993 8 a.m.–12 noon, June 18, 1993.

Place: Omni Shoreham, 2500 Calvert Street, NW., Washington, DC 20008, telephone 202/234–0700.

Status: Open to the public, limited only by available space.

Matters to be Discussed: Immunization coverage levels among preschool-aged children in the United States; the current status of vaccine development; a global overview of international immunization programs; update on adult immunizations; and the latest information about the epidemiology, prevention, and control of vaccine-preventable diseases with special emphasis on children less than 2 years of age.

Contact Person for More Information: Mr. Brent S. Shaw, Chief, Program Support Section, Division of Immunization, NCPS, CDC, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Mailstop E–52, telephone 404/639–2590.

Dated: April 14, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–9153 Filed 4–19–93; 8:45 am]

BILLING CODE 4160–18–M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Mental Health Statistics; Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: NCVHS Subcommittee on Mental Health Statistics.

Time and Date: 9 a.m.–4:30 p.m., May 11, 1993.

Place: Room 337A–339A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will hold discussions around potential future subcommittee activities including the collection and analysis of institutional and person-oriented longitudinal data on children and youth with mental disorders, and recent developments in the area of disability statistics.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone number 301/436–7050.

Dated: April 14, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–9152 Filed 4–19–93; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 93N–0077]

Heather Drug Co., et al.; Withdrawal of Approval of 25 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice, published in the **Federal Register** of March 3, 1993 (58 FR 12244), that withdrew approval of 25 abbreviated new drug applications (ANDA's). That document inadvertently withdrew approval of ANDA 87–693 for Ergomar Sublingual Tablets (ergotamine tartrate tablets, USP), 2 mg, held by Fisons Corp., P.O. Box 1710, Rochester, NY 14603. This notice confirms that approval of ANDA 87–693 is still in effect, and that the withdrawal of approval of the ANDA was in error.

EFFECTIVE DATE: March 3, 1993.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8038.

In FR Doc. 93–4792 appearing at page 12244 in the issue of Wednesday, March 3, 1993, the following correction is made on page 12245: In the first column in the table, the entry for ANDA 87–693 is removed.

Dated: April 7, 1993.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 93–9111 Filed 4–19–93; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Joint Meeting of the Food and Veterinary Medicine Advisory Committees

Date, time, and place. May 6 and 7, 1993, 9 a.m., Holiday Inn Crowne Plaza at Metro Center, Salons C and D, 775 12th St. NW., Washington, DC.

Type of meeting and contact person. Open committee discussion, May 6, 1993, 9 a.m. to 1 p.m.; open public hearing, 1 p.m. to 5 p.m., unless public participation does not last that long; open committee discussion, May 7, 1993, 9 a.m. to 5 p.m.; Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFS–5), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4727, or Catherine M. DeRoever, Advisory Committee Staff (HFS–22), 202–205–4251, FAX 202–205–4970.

General function of the committees. The Food Advisory Committee provides advice on emerging food safety, food science, and nutrition issues that FDA considers of primary importance in the next decade. The Veterinary Medicine Advisory Committee reviews and evaluates available data concerning safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing (facsimilies will be accepted), on issues pending before the committee. Those desiring to make formal presentations should notify the contact person by close of business May 3, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments. If necessary, comments may be limited to 5 minutes.

Open committee discussion. The committees will discuss possible labeling of foods derived from cows receiving supplemental bovine somatotropin (BST).

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing (facsimilies will be accepted), prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: April 15, 1993.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 93-9258 Filed 4-15-93; 4:50 pm]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-03-5410-11-A101; AZA-27355]

Receipt of Conveyance of Mineral Interest Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of minerals segregation.

SUMMARY: The private lands described in this notice, aggregating approximately 3.75 acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Vivian Reid, Land Law Examiner, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027 (602) 780-8090. Serial Number AZA-27355.

Gila and Salt River Base and Meridian, Pinal County, Arizona

T. 1 N., R. 8 E.,

Sec. 13, SW¼SE¼NE¼NE¼,
E½SE¼SW¼NE¼NE¼.

Minerals Reservation—All Minerals

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1-1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate upon: issuance of a patent or deed of such mineral interest; upon final rejection of the application; or two years from the date of publication of this notice, whichever occurs first.

Dated: April 9, 1993.

David J. Miller,

District Manager.

[FR Doc. 93-9129 Filed 4-19-93; 8:45 am]

BILLING CODE 4310-32-M

[ES-962-4950-13-4513; ES-046011, Group 1, Rhode Island]

Notice of Filing of Plat of the Trust Lands of the Narragansett Indian Tribe, Washington County, RI

The plat, in five sheets, of the survey of the boundaries of the land held in trust for the Narragansett Indian Tribe in Washington County, Rhode Island, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on May 21, 1993.

The survey was made upon request submitted by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., May 21, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $1.75 per copy.

Dated: April 6, 1993.

Denise P. Meridith,

State Director.

[FR Doc. 93-9165 Filed 4-19-93; 8:45 am]

BILLING CODE 4310-GJ-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before

April 10, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by May 5, 1993.

Beth L. Savage,
Acting Chief of Registration, National Register.

CALIFORNIA

San Diego County

Las Flores Adobe, Jct. of Pulgas and Stuart Mesa Rds., Camp Pendleton, 93000375
Las Flores Estancia, Jct. of Pulgas and Stuart Mesa Rds., Camp Pendleton, 93000391

COLORADO

Jefferson County

Ammunition Igloo (Camp George West MPS), 15001 Denver W. Pkwy., Golden, 93000379
Colorado Amphitheater (Camp George West MPS), 15001 Denver W. Pkwy., Golden, 93000378

FLORIDA

Polk County

Bartow Downtown Commercial District (Bartow MPS), Roughly bounded by Davidson and Summerlin Sts. and Broadway and Florida Aves., Bartow, 93000393
Northeast Bartow Residential District (Bartow MPS), Roughly bounded by Jackson and First Aves. and by Church and Boulevard Sts., Bartow, 93000392
South Bartow Residential District (Bartow MPS), Roughly bounded by Floral and First Aves, and Main and Vine Sts., Bartow, 93000394

St. Johns County

Solla—Carcaba Cigar Factory, 88 Riberia St., St. Augustine, 93000374

Sarasota County

El Patio Apartments, 500 N. Audubon Pl., Sarasota, 93000390

HAWAII

Hawaii County

Palace Theater, 38 Haili St., Hilo, 93000376

Honolulu County

Foster Botanic Garden, 50 N. Vineyard Blvd., Honolulu, 93000377

IDAHO

Bonneville County

Ridge Avenue Historic District, Roughly bounded by N. Eastern Ave., Birch St., S. Blvd., Ash St., W. Placer Ave. and Pine St., Idaho Falls, 93000388

Canyon County

Beale, F. F., House, 1802 Cleveland Blvd., Caldwell, 93000386

Caribou County

Enders Hotel, 76 S. Main St., Soda Springs, 93000384
Soda Springs City Hall, 109 S. Main St., Soda Springs, 93000385

Clark County

St. James' Episcopal Mission Church, Reynolds St. (Old Co. Hwy. 91), Dubois, 93000387

Power County

Oneida Milling and Elevator Company Grain Elevator, Offshore in American Falls Reservoir, American Falls vicinity, 93000380

MISSISSIPPI

Attala County

Niles, Judge Henry C., House, 305 N. Huntington St., Kosciusko, 93000383

MISSOURI

Jackson County

Volker, William, House, 3717 Bell St., Kansas City, 93000408

Pettis County

Sedalia Commercial Historic District, Roughly bounded by S. Lamine Ave., W. Seventh St., S. Osage Ave, and Main St., Sedalia, 93000407

NEW YORK

Greene County

Elka Park Historic District, SE of Hunter town center, Hunter vicinity, 93000399

OHIO

Ashland County

Center Street Historic District (Boundary Increase), Center St. Between Town Cr. and Walnut St. and between Samaritan and Morgan Aves., Asland, 93000397

Clinton County

South South Street Historic District, 151—515 S. South St., Wilmington, 93000396

Columbiana County

Cherry Valley Coke Ovens, Jct. of Cherry Valley and Butcher Rds., Leetonia, 93000404

Delaware County

Cooper, Samuel, Farmhouse, 695 Lawrence Rd.. Radnor vicinity, 93000395

Franklin County

Central Building of the Columbus Young Men's Christian Association, 40 W. Long St., Columbus, 93000402

Hamilton County

Yost Tavern, 7872 Cooper Rd., Montgomery, 93000406

Lucas County

Inverness Club, 4601 Dorr St., Toledo, 93000398

Meigs County

Downing, John, Jr., House, 220—232 N. Second Ave., Middleport, 93000403

Portage County

Cottage Hill Farm, 5555 Newton Falls R., Ravenna Township, Ravenna vicinity, 93000401

Summit County

Seiberling, Charles Willard, House, 1075 W. Market St., Akron, 93000405

TEXAS

Travis County

Austin Public Library, 810 Guadalupe St., Austin, 93000389

VERMONT

Windsor County

Boyd, Theron, Homestead (Agricultural Resources of Vermont), Town Hwy. 6, Hartford, 93000381

WEST VIRGINIA

Pendleton County

Sites Homestead, Seneca Rocks Visitor Center, Seneca Rocks, 93000382

WISCONSIN

Winnebago County

Wing, William C., House, 143 N. Park Ave., Neenah, 93000400.

[FR Doc. 93-9194 Filed 4-19-93; 8:45 am]
BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (1029-0041), Washington, DC 20503, telephone 202-395-7340.

Title: Part 773—Requirements for Permits and Permit Processing.

OMB Number: 1029-0041.

Abstract: Ensures that applicants for permanent program permits or their associates, who are in violation of the Surface Mining Control and Reclamation Act do not receive or maintain Surface Mining permits.

Bureau Form Number: None.

Frequency: On Occasion.

Description of Respondents: State Regulatory Authorities and Mining Company officials.
Annual Responses: 4,368.
Annual Burden Hours: 9,233.
Estimated Completion Time: 2 hours.
Bureau Clearance Officer: John A. Trelease (202) 343–1475.

Dated: March 10, 1993.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 93–9124 Filed 4–19–93; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0034), Washington, DC 20503, telephone 202–395–7340.

Title: Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, 30 CFR part 778.
OMB Number: 1029–0034.
Abstract: Section 507(b) of the Surface Mining Control and Reclamation Act of 1977 provides that persons conducting coal mining activities submit to the regulatory authority all relevant information regarding ownership and control of the property to be affected, their compliance status and history. This information is used to ensure all legal, financial and compliance requirements are satisfied prior to issuance or denial of a permit.
Bureau Form Number: None.
Frequency: On Occasion.
Description of Respondents: Coal Mine Operators.
Annual Responses: 4,415.
Annual Burden Hours: 22,412.
Estimated Completion Time: 5 hours.
Bureau Clearance Officer: John A. Trelease (202) 343–1475.

Dated: December 14, 1992.

Andrew F. DeVito,

Acting Chief, Division of Technical Services.

[FR Doc. 92–9127 Filed 4–19–93; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0088), Washington, DC 20503, telephone 202–395–7340.

Title: Revision; Renewal; and Transfer, Assignment or Sale of Permit Rights 30 CFR part 774.
OMB Number: 1029–0088.
Abstract: Sections 506(d), 511(a)(1) and 511(b) of Public Law 95–87 provide that persons seeking permit revisions, renewals, transfer, sale or assignment of permit rights for coal mining activities, submit relevant information to the regulatory authority to allow the regulatory authority to determine whether the applicant meets the requirements for the action anticipated.
Bureau Form Number: None.
Frequency: On occasion.
Description of Respondents: Coal mine operators.
Annual Responses: 2,035.
Annual Burden Hours: 24,790.
Estimated Completion Time: 12 hours.
Bureau Clearance Officer: John A. Trelease (202) 343–1475.

Dated: December 14, 1992.

Andrew F. DeVito,

Acting Chief, Division of Technical Services.

[FR Doc. 93–9128 Filed 4–19–93; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–303 Sub 12X]

Wisconsin Central Ltd.—Abandonment Exemption—In Douglas, Washburn, and Barron Counties, WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Wisconsin Central Ltd. of its 56.9-mile line of railroad extending between milepost 25.8, near Gordon, and milepost 56.0, at Rice Lake, in Douglas, Washburn, and Barron Counties, WI. The Commission issues a notice of interim trail use for the line and also makes the exemption subject to standard employee protective conditions and an historic preservation condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 20, 1993. Formal expressions of intent to file an offer of financial assistance[1] under 49 CFR 1152.27(c)(2) must be filed by April 30, 1993, petitions to stay must be filed by May 5, 1993, and petitions for reconsideration must be filed by May 17, 1993. Requests for a public use condition must be filed by May 10, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–303 (Sub-No. 12X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423,

and

(2) Petitioner's representative: Janet H. Gilbert, Wisconsin Central Ltd., 6250 N. River Road, suite 9000, Rosemont, IL 60018.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610 [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721].

Decided: April 8, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–9206 Filed 4–19–93; 8:45 am]

BILLING CODE 7035–01–P

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Semiconductor Research Corp.

Notice is hereby given that, on March 1, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Semiconductor Research Corporation ("SRC"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SRC has added Scientific Exchange, Osgood, Ontario, Canada as an affiliate member. The following companies have been deleted from SRC membership: Hampshire Instruments, Inc.; Micron Technology Inc.; VLSI Standards, Inc.; and Xerox Corporation.

No other changes have been made in either the membership or planned activities of the group research project. Membership in this group research project remains open, and SRC intends to file additional written notification disclosing all changes in membership.

On January 8, 1985, SRC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 30, 1985, (50 FR 4281).

The last notification was filed with the Department on January 4, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 29, 1993, (58 FR 6529).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93-9121 Filed 4-19-93; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984 "Ultra Low Emission Engine Program"

Notice is hereby given that, on April 1, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership/project status. Changes have been made in the membership and length of performance. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Chrysler Corporation, Auburn Hills, MI (effective 01/19/93) has joined as a member; and the period of performance has been extended for one year to September 30, 1993.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

On November 13, 1991, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice ("the Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 9, 1991, 56 FR 64276. The last substantive change notification was filed with the Department on December 14, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 25, 1993, 58 FR 6015. The last correction notification was filed with the Department on February 16, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 10, 1993, 58 FR 13283.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93-9122 Filed 4-19-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging a Final Judgement by Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on April 9, 1993, a proposed consent decree in *United States* versus *Ridge Developers, Inc.*, Civil Action No. 4:CV-92-0511, was lodged with the United States District Court for the Middle District of Pennsylvania.

The complaint filed by the United States in April 1992 seeks a declaratory judgment that the purported transfer of the property known as the East Mount Zion Superfund Site ("Site"), is void as a matter of law and that Ridge Developers, Inc. is the lawful owner of that property. The suit also seeks a judicial order under section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability ("CERCLA"), 42 U.S.C. 9604(e), granting EPA access to the Site for purposes of conducting CERCLA response actions.

The proposed consent decree resolves defendants liability with respect to the purported property transfer and grants the United States Environmental Protection Agency access to the Site for purposes of conducting CERCLA response actions. The United States has specifically reserved its right to seek further relief from Ridge on claims that are outside of the scope of the complaint filed in this case.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* versus *Ridge Developers, Inc.*, DOJ Ref. No. 90-11-2-655.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Middle District of Pennsylvania, Harrisburg, PA; the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202-624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93-9120 Filed 4-19-93; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Labor Research Advisory Council: Reestablishment

In accordance with the provisions of the Federal Advisory Committee Act, and after consultation with General Services Administration (GSA), I have determined that renewal of the Labor Research Advisory Council is in the public interest in connection with the performance of duties imposed on the Department of Labor.

The Council will advise the Commissioner of Labor Statistics regarding the statistical and analytical work of the Bureau of Labor Statistics, providing perspectives on these programs in relation to the needs of the labor unions and their members.

Council membership and participation in the Council and its subcommittees are broadly representative of the union organizations of all sizes of membership, with national coverage which reflects the geographical, industrial, and occupational sectors of the economy.

The Council will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. The Charter is being filed simultaneously herewith with the Library of Congress and the appropriate congressional committees.

Interested persons are invited to submit comments regarding renewal of the Labor Research Advisory Council. Such comments should be addressed to: William G. Barron, Jr., Bureau of Labor Statistics, Department of Labor, Postal Square Building, 2 Massachusetts Avenue NE., Washington, DC 20212, telephone: 202–606–7804.

Signed at Washington, DC, this 5th day of April, 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93-9201 Filed 4-19-93; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of March 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,206; American National Can Co., Chicago, IL

TA-W-28,177; Pacific Uniform Mfg. Co., Inc., Conyers, GA

TA-W-28,199; North American Directory Corp. (NADCO), Lowell, MA

TA-W-28,102; Interroyal Corp., Storage Products Div., Warren, PA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-28,146; Siemens Nixdorf Information System, Inc., Research & Development Hardware Group, Burlington, MA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,236; Amerada Hess Corp., Tulsa, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,085; Weatherford U.S., Inc. (Formerly Weatherford Petco Oilfield Service), Ada, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,261; Phillips Petroleum Co., Houston, TX

TA-W-28,262; Phillips 66 Co., Houston, TX

TA-W-28,263; Phillips Chemical Co., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,270; General Motors Corp., Powertrain Div., Flint V-8 Plant, Flint, MI

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,166; Dresser Rand Co., Turbo Products Div., Olean, NY

U.S. imports of oil and gas field machinery was negligible in 1991 and 1992.

TA-W-28,468; Maynard Oil Co., Dallas, TX

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

TA-W-28,342; Mobil Natural Gas, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,272; General Motors Corp., AC Rochester, Sioux City, IA

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-28,321; Charland Sportswear, Charleroi, PA

A certification was issued covering all workers producing ladies' skirts, slacks and shorts separated on or after February 1, 1992.

TA-W-28,063; Feature Enterprises, Inc., New York, NY

A certification was issued covering all workers producing diamond and gold jewelry separated on or after November 12, 1991.

TA-W-28,229, TA-W-28,230; Al Tech Specialty Steel Corp., Dunkirk, NY and Watervliet, NY

A certification was issued covering all workers separated on or after January 7, 1992.

TA-W-28,273; General Motors Corp., NAO Van Nuys, Van Nuys, CA

A certification was issued covering all workers separated on or after May 8, 1993.

TA-W-28,269; General Motors Corp., NAO Willow Run, Ypsilanti, MI

A certification was issued covering all workers separated on or after January 22, 1992.

TA-W-28,082; Hadson Energy Resources Corp., Hadson Petroleum (USA) Inc., Oklahoma City, OK

A certification was issued covering all workers separated on or after November 20, 1991.

TA-W-28,265; Thomson Consumer Electronics, Inc., Bloomington, IN

A certification was issued covering all workers separated on or after January 15, 1992.

TA-W-28,363; Thomson Consumer Electronics, Inc., Indianapolis, IN

A certification was issued covering all workers separated on or after February 19, 1992.

TA-W-28,246; Echo Bay Minerals Co., Republic, WA

A certification was issued covering all workers producing gold and silver separated on or after January 11, 1992.

TA-W-27,906; Asamera Minerals, Inc., Wenatchee, WA

A certification was issued covering all workers producing gold and silver separated on or after September 25, 1991.

I hereby certify that the aforementioned determinations were issued during the month of March 1993. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: April 12, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-9200 Filed 4-19-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-28,431]

Baker-Hughes Tubular Services, Odessa, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 8, 1993 in response to a worker petition which was filed on February 23, 1993 on behalf of workers at Baker-Hughes Tubular Services, Odessa, Texas.

The petitioning group of workers were recently denied Trade Adjustment Assistance on March 19, 1993 (TA-W-28,238C) when all locations of Baker-Hughes Tubular Services were investigated. That investigation revealed that all workers of Baker-Hughes Tubular Services do not produce an article within the meaning of section 223(3) of the Act. No new information has been received to change this determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 8th day of April 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-9204 Filed 4-19-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,881]

Grant Tensor Geophysical Corp., a/k/a Norpak International Nevada, Inc., Houston, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 14, 1993, applicable to the workers at the subject firm.

At the request of the company officials, the Department reviewed the certification for workers of the subject firm. The investigation findings show that the claimants' wages for Grant Tensor were reported under the Norpak International Nevada Inc., Unemployment Insurance (UI) tax account through December 31, 1992. All claimants' wages on and after January 1, 1993 are reported under Grant Tensor's UI tax account.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The amended notice applicable to TA-W-27,881 is hereby issued as follows:

All workers of Grant Tensor Geophysical Corporation, Houston, Texas also known as Norpak International Nevada, Inc., Houston, Texas for UI tax purposes, who were engaged in providing seismic data, and who became totally or partially separated from employment on or after September 21, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 12th day of April 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-9205 Filed 4-19-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-28, 329]

Optek Technology, El Paso, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Optek Technology, El Paso, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-28, 329; Optek Technology, El Paso, Texas (April 12, 1993)

Signed at Washington, DC this 13th day of April, 1993.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 93-9202 Filed 4-19-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,950, TA-W-27,950A, TA-W-27,950B]

Willamette Industries, Inc., Eugene, OR and Veneta, OR; Goshen Trucking, Eugene, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 25, 1993 applicable to all workers of Willamette Industries, Inc., Eugene and Veneta, Oregon. The certification notice was published in the Federal Register on February 11, 1993 (58 FR 8063).

New information received by the Department shows that Goshen Trucking, Eugene, Oregon is owned by Willamette Industries, Inc. Goshen Trucking laid off several workers in December, 1992, as a result of reduced demand for its long hauling services from Willamette Industries in Eugene and Veneta, Oregon whose workers are already certified for trade adjustment assistance.

Accordingly, the amended notice applicable to TA-W-27,950 is hereby issued as follows:

All workers of Willamette Industries, Inc., Eugene, Oregon (TA-W-27,950) and Veneta, Oregon (27,950A) and Goshen Trucking, Eugene, Oregon (TA-W-27,950B) engaged in employment related to the production of veneer or plywood or trucking services, who became totally or partially separated from employment on or after October 20, 1991, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 14th day of April 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-9203 Filed 4-19-93; 8:45 am]

BILLING CODE 4510-30-M

LIBRARY OF CONGRESS

American Folklife Center Board of Trustees Meeting

AGENCY: Library of Congress.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Board of Trustees of the

American Folklife Center. This notice also describes the functions of the Center. Notice of this meeting is required in accordance with Public Law 94-463.

DATES: Friday, May 7, 1993; 9 a.m. to 1 p.m.

ADDRESSES: Librarian's Conference Room, LM 608, Library of Congress, Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Raymond L. Dockstader, Deputy Director, American Folklife Center, Washington, DC 20540.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Raymond Dockstader at (202) 707-6590.

The American Folklife Center was created by the U.S. Congress with passage of Public Law 94-201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out its mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Dated: April 7, 1993.

Raymond L. Dockstader,

Deputy Director, American Folklife Center.

[FR Doc. 93-9166 Filed 4-19-93; 8:45 am]

BILLING CODE 1410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93-031]

Advisory Committee on the Redesign of the Space Station; Establishment and Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of establishment; notice of meeting.

SUMMARY: Pursuant to sections 9(a) and (c) of the Federal Advisory Committee Act, Public Law 92-463, and after consultation with the Committee Management Secretariat, General Services Administration, the National Aeronautics and Space Administration (NASA) has determined that establishment of the Advisory Committee on the Redesign of the Space Station (hereinafter referred to as the "Advisory Committee") is in the public interest in connection with the performance of duties imposed upon NASA by law.

In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Advisory Committee.

DATES: April 22, 1993, 9:30 a.m. to 5 p.m.

ADDRESSES: Crystal Gateway Three, 8th Floor, 1215 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. John McCarthy, Code R, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-4590.

SUPPLEMENTARY INFORMATION: The President has asked the Administrator of the National Aeronautics and Space Administration to assess redesign options for the Space Station. The Advisory Committee will submit its report, joined by the NASA Administrator, to the Office of Science and Technology Policy, National Economic Council, Office of Management and Budget, and the Vice President in June. The Advisory Committee is chaired by Dr. Charles M. Vest and is composed of 16 members, selected from a cross section of qualified individuals with an extensive knowledge of space activities and broad technical and managerial expertise. The meeting will be open to the public on April 22 up to the seating capacity of the room, which is approximately 50 persons including Advisory Committee members and other participants.

The agenda for the meeting is as follows:

—Requirements Assessment Process update

—Option Evaluation Plan and Factors

—Option development status and plans

—Briefings as appropriate

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants, and in order for the Committee to complete its report by June.

Dated: April 15, 1993

Danalee Green,

Chief, Management Controls Office, National Aeronautics and Space Administration.

[FR Doc. 93-9185 Filed 4-15-93; 1:06 pm]

BILLING CODE 7510-01-M

[Notice 93-030]

NASA Wage Committee.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Wage Committee.

DATES: June 30, 1993, 1:30 p.m. to 3:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 3G38, Two Independence Square, 300 E Street SW., Washington, DC 20546-0001 (202) 358-1218.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Green Glasco, Code FPP, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-1218.

SUPPLEMENTARY INFORMATION: The Committee's primary responsibility is to consider and make recommendations to the Director, Personnel Division, National Aeronautics and Space Administration on all matters involved in the development and authorization of a Wage Schedule for the Cleveland, Ohio, wage area, pursuant to Public Law 92-392. The Committee, chaired by Dr. David Poferl, consists of six members. During this meeting the Committee will consider wage data, local reports, recommendations, and statistical analyses and proposed wage schedules reviewed therefrom. Discussions of these matters in a public session would constitute release of confidential commercial and financial information obtained from private industry. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(4), it has been determined that this meeting will be entirely closed to the public. However, members of the public who may wish to do so, are invited to submit material in writing to the Chairperson concerning matters felt to be deserving of the Committee's attention.

TYPE OF MEETING: Closed.

PURPOSE OF MEETING: The Committee will recommend to the NASA Wage

Fixing Authority the proposed wage schedule to be adopted.

Danalee Green,

Chief, Management Controls Office, National Aeronautics and Space Administration.

[FR Doc. 93–9159 Filed 4–19–93; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Painting Fellowships Section) to the National Council on the Arts will be held on May 17–20, 1993 from 9 a.m.–8 p.m. and May 21 from 9:30 a.m.–5 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

A portion of this meeting will be open to the public on May 21 from 3:30 p.m.–5 p.m. for policy discussion and guidelines review.

The remaining portions of this meeting on May 17–20 from 9 a.m.–8 p.m. and May 21 from 9:30 a.m.–3:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: April 12, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–9123 Filed 4–19–93; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Social and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Social and Economic Sciences.

Date and Time: May 6, 1993; 9 a.m.–5 p.m.; May 7, 1993; 9 a.m.–1 p.m.

Place: Room 500–D, 1110 Vermont Avenue, NW., Washington, DC.

Type of Meeting: Part-Open

Contact Person: Dr. James H. Blackman, Acting Deputy Director, Division of Social, Behavioral, and Economic Research, room 336, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357–7966.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open session: May 7, 1993; 11 a.m.–1 p.m., To discuss research trends in Social and Economic Sciences. *Closed session:* May 6, 1993; 9 a.m.–5 p.m. and May 7, 1993; 9 a.m.–11 a.m. To review and evaluate methodology, measurement and statistics proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such a salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 15, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–9170 Filed 4–19–93; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Medical Uses of Isotopes; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission will convene its next regular meeting of the Advisory Committee on Medical Uses of Isotopes (ACMUI) on May 3 and 4, 1993. Topics of discussion will include: Staff action resulting from the Incident Investigation Team report on the recent brachytherapy misadministration in Indiana, Pennsylvania; modification in licensing and inspection guidance for high-dose-rate afterloading devices; modification of the role of the NRC medical consultant; training and experience for physicians involved with therapy applications of byproduct material; the role of the Radiation Safety Officer and Radiation Safety Program management. In addition, the NRC staff will provide status reports on proposed rulemaking, including: "Proposed Amendments to 10 CFR 35.75, Release of patients Containing Radiopharmaceuticals or Permanent Implants"; "Proposed Amendments on Preparation, Transfer, and Use of Byproduct Material for Medical Use"; and "Administration of Byproduct Material or Radiation from Byproduct Material to Patients Who May be Pregnant or Nursing." The NRC staff will also provide a status report on ACMUI membership.

DATES: The meeting will begin at 8 a.m., on May 3 and 4, 1993.

ADDRESSES: The Ramada Bethesda Hotel and Conference Center, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Office of Nu- clear Material Safety and Safeguards, MS 6–H–3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–504–3417.

SUPPLEMENTARY INFORMATION: The following information is provided concerning the topics to be discussed at the meeting:

Recent Brachytherapy Incident, Indiana, Pennsylvania

The NRC staff will provide a brief overview of the development of a management plan for the medical use program. This discussion will focus on those staff actions included in the plan resulting from the Incident Investigation team report on the brachytherapy misadministration in Indiana, Pennsylvania.

Modification in Licensing and Inspection Guidance for High-Dose Rate Afterloading Devices

The NRC staff is currently revising its licensing and inspection procedures for high-dose-rate afterloader licensees. The NRC staff will provide an overview of these changes and seek input from the ACMUI.

Modification of the Role of the NRC Medical Consultant

The NRC staff will discuss proposed changes to NRC Manual Chapter 1360. The discussion will focus on the enhanced role of the medical consultant in investigating misadministrations.

Training and Experience for Physicians Involved With Therapy Applications of Byproduct Material

The committee will review and discuss the current training and experience that NRC requires for physicians involved in therapeutic applications of byproduct material.

The Role of the Radiation Safety Officer and Radiation Safety Program Management

The committee will review and discuss the responsibilities of a radiation safety officer and his/her individual role in overall radiation safety program management. Questions to be explored may include: Who should serve as RSO? What should be the responsibility of the licensee's senior management regarding the RSO function?

Status Reports on Proposed Rulemaking

Proposed Amendments to 10 CFR 35.75, Release of Patients Containing Radiopharmaceuticals or Permanent Implants

The staff will provide a status report regarding proposed rulemaking in response to three petitions for rulemaking, one from Carol Marcus, M.D. (February 6, 1991), and two from the American College of Nuclear Medicine (January 14, 1992, and April 21, 1992), regarding criteria for the release of patients administered byproduct material.

Proposed Amendments on Preparation, Transfer, and Use of Byproduct Material for Medical Use

On June 15, 1989, the American College of Nuclear Physicians and Society of Nuclear Medicine (ACNP/SNM) filed a petition with NRC addressing five issues relating to the preparation and use of radiopharmaceuticals. On August 23, 1990, NRC published the "Interim Final Rule," addressing two issues in the petition. The remaining issues to be resolved are: The preparation of radioactive drugs, including compounding; the use of radiolabled biologics; and the use of byproduct material for research on human subjects. The NRC staff has presented draft rule language to the Commission, for its consideration. A status report on the progress of the rulemaking will be provided.

Administration of Byproduct Material or Radiation From Byproduct Material to Patients Who May Be Pregnant or Nursing: Pregnancy and Breast-Feeding

The staff will provide a status report on issues and recommendations concerning unintended radiation doses or dosages to an embryo, fetus, or nursing infant, resulting from administration of radiopharmaceuticals or radiation to pregnant or breast-feeding patients.

Review of Physician's Credentials

The ACMUI will review the training and experience of two Canadian physicians who have applied to be listed as "authorized users" on NRC medical use licenses. This portion of the meeting will be closed to the public.

Conduct of the Meeting

Barry Siegel, M.D. will chair the meeting. Dr. Siegel will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Larry W. Camper (address listed above). Comments must be received by April 23, 1993, to ensure consideration at the meeting. The transcript of the meeting will be kept open until May 7, 1993, for inclusion of written comments.

2. Persons who wish to make oral statements should inform Mr. Camper, in writing, by April 27, 1993. Statements must pertain to the topics on the agenda for the meeting. The Chairman will rule on requests to make oral statements. Members of the public will be permitted to make oral statements if time permits. Permission to make oral statements will be based on the order to which requests are received. In general oral statements will be limited to approximately 5 minutes. Oral statements must be supplemented by detailed written statements, for the record. Rulings on who may speak, the order of presentation, and time allotments may be obtained by calling Mr. Camper, 301–504–3417, between 9 a.m. and 5 p.m. e.s.t., on April 29, 1993.

3. At the meeting, questions from attendees other than committee members, NRC consultants, and NRC staff will be permitted at the discretion of the Chairman.

4. The transcript, minutes of the meeting, and written comments will be available for inspection, and copying, for a fee, at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC 20555, on or about May 14, 1993.

5. Seating for the public will be on a first-come, first-served basis.

I have determined in accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C. app.) that it is necessary to close the portion of this meeting devoted to the review of physicians credentials because it will involve a discussion of information the release of which would represent a clearly unwarranted invasion of personal privacy under 5 U.S.C. 552b(c)(6).

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily section 161a); the Federal Advisory Act (5 U.S.C. app.); and the Commission's regulations in title 10, Code of Federal Regulations, part 7.

Dated: April 15, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–9190 Filed 4–19–93; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–87 and NPF–89, issued to Texas Utilities Electric Company (the licensee), for operation of the Comanche Peak Steam Electric Station (CPSES) Units 1 and 2 located in Somervell County, Texas.

The proposed amendment would change the technical specifications to allow the use of fuel enrichments up to 4.3 weight percent U–235. The present maximum enrichment allowed in 3.5 weight percent.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By May 20, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 428-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Suzanne C. Black, Director, Project Directorate IV-2: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, NW., suite 1000, Washington, DC 20336, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated October 16, 1992, supplemented by letter dated March 17, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 14th day of April 1993.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Director, Project Directorate IV-2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93-9191 Filed 4-19-93; 8:45 am]

BILLING CODE 7590-01-M

PEACE CORPS

Information Collection Request Under Review OMB Review

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) this notice announces that the information collection request abstracted below has been forwarded to the Office of Management and Budget for review and is available for public review and comment. A copy of the information collection may be obtained from Ms. Mona Melanson, Office of Returned Volunteer Services, United States Peace Corps, 1990 K Street, NW.. Washington, DC. 20526. Ms. Melanson may be called at 202-606-3126. Comments on this form should be addressed to Mr. Jeff Hill, Desk Officer, Office of Management and Budget, Washington, DC 20503.

INFORMATION COLLECTION ABSTRACT:

Title: RPCV and Former Staff Update Card

Need for and Use of the Information: Peace Corps needs this information in order to help the agency regain and maintain contact with former Volunteers and staff.

Respondents: Former Peace Corps Volunteers and staff.

Burden on the public:

a. Annual reporting burden: 165 hours

b. Annual record keeping burden: 0 hours

c. Estimated average burden per response: 2 minutes

d. Frequency of response: On occasion

e. Estimated number of likely respondents: 5,000.

This notice is issued in Washington, DC., on March 24, 1993.

Joan Ambre,

Associate Director for Management.

[FR Doc. 93-9176 Filed 4-19-93; 8:45 am]

BILLING CODE 6051-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32124; File No. SR-MSE-92-03]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Order Approving Proposed Rule Change Establishing a Pilot Program for the Automatic Execution of Limit Orders

April 13, 1993

I. Introduction

On February 20, 1992, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to establish a one year pilot program[3] for the automatic execution of non-marketable limit orders.[4] The proposed rule change was published for comment in Securities Exchange Act Release No. 30469 (March 11, 1992), 57 FR 9462 (March 18, 1992).[5] One comment letter was received on the proposal.[6]

II. Proposal

The MSE proposes to implement, for a one year pilot period, a system enhancement which would facilitate the automatic execution of non-marketable limit orders in a specialist's book. The proposed automatic execution feature ("Auto-Ex") will operate by comparing the size of the MSE-entered limit order against the amount of stock ahead of that order in the consolidated market. The comparison will be made against the consolidated quotation size at the time the MSE limit order is received. Thereafter, the Auto-Ex system will keep track of all prints in the primary market and will automatically execute the limit order once sufficient size prints in the primary market.[7] As additional limit orders at the same price are received by the specialist, comparisons will be made and entered based upon the shares ahead of those limit orders at the time of receipt, including shares ahead on the MSE. The Auto-Ex feature will not permit a limit order to be filled out of sequence. Limit orders will not be compared for Auto-Ex purposes until such time as the limit price becomes the best bid/offer ("BBO") for the first time.[8]

The Auto-Ex feature will execute limit orders in accordance with existing MSE rules.[9] Auto-Ex will be available for all dually traded issues; however, specialists will be permitted to choose Auto-Ex on an issue by issue basis.[10] Generally, however, Auto-Ex will be used for issues which, based on experience, have demonstrated reliable and accurate quotes in the primary market. Limit orders not subject to Auto-Ex will be "flagged" with a prompt to alert the specialist that a fill may be due. The proposal to establish an Auto-Ex feature applies only to non-marketable limit orders. It is not applicable to marketable limit orders or to market orders.

The MSE states that the purpose of this proposal is to further automate the MSE's trading floor functions in order to improve the Exchange's performance in filling limit orders.[11] By providing for automatic execution of limit orders in accordance with existing Exchange rules, the MSE states that it is eliminating the need for the manual operation required of specialists in determining when and to what extent limit orders are due fills based on primary market prints. The MSE argues that the manual effort expended by specialists in filling limit orders that are entitled to primary market protection is often time-consuming and can result in errors, particularly when there is heavy trading volume. The Exchange believes that the present proposal will, therefore, directly benefit customers because it will result in more timely fills while eliminating errors resulting from manual execution.

The Exchange states that, although Auto-Ex will require additional system capacity, the time that specialists now require on the system to perform manual search and execution functions with respect to the execution of limit orders will be eliminated. The MSE anticipates that the implementation of the proposal will result in a small net increase in use of system capacity.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] The MSE has requested approval of the proposed rule change on a one year pilot basis. See letter from Daniel J. Liberti, Associate Counsel, MSE, to Mary Revell, Branch Chief, Commission, dated May 12, 1992.

[4] A limit order is an order to buy or sell a stated amount of a security at a specified price or at a better price. A limit order is called "marketable" when the prevailing best offer (bid) is equal to or less (greater) than the order price. The proposed rule change does not apply to the execution of marketable limit orders.

[5] The release number, which was incorrectly published in the Federal Register as Securities Exchange Act Release No. 20469, was corrected in 57 FR 11352 (April 2, 1992).

[6] See letter from Thomas W. Clegg, Senior Vice President, Wheat, First Securities, Inc., to Jonathan G. Katz, Secretary, Commission, dated March 12, 1992. This commentator expressed support for the MSE's Auto-Ex proposal.

[7] For example, assume an MSE specialist receives an agency limit order to buy 2,000 shares of ABC at ½. The consolidated quotation is ½ bid, ¾ offered; 5,000 shares bid and 5,000 shares offered, meaning there are 5,000 shares ahead of the MSE order. The Auto-Ex system will automatically execute the entire MSE limit order after 7,000 shares print at ½ in the primary market. However, when more than 5,000 but less than 7,000 shares print at ½ in the primary market, the order will be flagged with a flashing prompt to alert the specialist that the order may be due at least a partial fill. See MSE Article XX, Rule 37 governing primary market protection of certain limit orders.

[8] For example, if the consolidated quotation is ¼ bid, ½ offered, 4,000 shares bid and 4,000 shares offered, and an MSE specialist receives a limit order to buy 2,000 shares for ⅛, that limit order will not be compared against the amount of stock ahead of the order in the consolidated market until such time as the ¼ bid is exhausted and the ⅛ bid becomes the best bid. At that time, the size which is disseminated with the ⅛ bid is the size against which the limit order is compared for Auto-Ex purposes.

[9] The MSE specialist will be the contra-side of all Auto-Ex trades. Conversation between Daniel J. Liberti, Associate Counsel, MSE, and Edith Hallahan, Attorney, Commission, on February 25, 1992.

[10] The MSE will limit a specialist's ability to activate and then deactivate Auto-Ex regularly by: (1) Only permitting a specialist to deactivate Auto-Ex on a certain day each month and (2) requiring that issues remain on Auto-Ex for a minimum of five trading days. See letter from Daniel J. Liberti, Associate Counsel, MSE to Mary Revell, Branch Chief, Commission, dated May 12, 1992.

[11] The MSE states that the proposed rule change is part of its initiative to improve Exchange performance in filling all orders on the MSE floor. The Exchange currently is addressing improved fills for market orders through the SuperMAX and Enhanced SuperMAX systems. See e.g., Securities Exchange Act Release No. 30958 (December 10, 1991), 56 FR 65765 (approving File No. SR-MSE-91-12). See also Securities Exchange Act Release Nos. 30701 (May 14, 1992), 57 FR 21683 (approving File No. SR-MSE-92-06) and 31038 (August 13, 1992), 57 FR 37856 (approving File No. SR-MSE-92-09).

However, the MSE believes that there are no system capacity concerns with respect to the Auto-Ex feature.

The MSE also states that the Auto-Ex feature will not change or amend any MSE trading rules, nor will it cause or allow limit orders to be filled under different parameters than under existing rules. Auto-Ex will only automate the manner in which limit orders are filled. The MSE states that it will continue to monitor specialist execution of limit orders through the Market Regulation/ Surveillance Department. In addition, MSE specialists will continue to be responsible for their books to the same degree as they are now under the manual execution system for limit orders.

III. Discussion and Conclusion

After careful consideration, the Commission finds that the MSE's proposal to implement Auto-Ex on a one year pilot basis is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b) and 11A of the Act.[12] In particular, the Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. In this regard, the Commission believes that Auto-Ex should help to speed execution of non-marketable limit orders on the MSE and may reduce the possibility of missed orders during periods of heavy trading volume.

The Commission also believes that the proposed rule change is consistent with the requirements of section 11A(a)(1)(C) of the Act.[13] Specifically, the Commission believes that the proposal is designed to contribute to the best execution of investors' orders while assuring the economically efficient execution of transactions, which in turn protects the public interest and promotes fair and orderly markets. In this regard, incoming orders subject to Auto-Ex, just as any other MSE order entitled to primary market protection, should receive the best execution available because a print on the primary market at the limit price triggers execution on the MSE. In addition, the Commission believes that the Exchange's implementation of Auto-Ex should assure fair competition among exchange markets, which benefits public investors.

According to the MSE, the systems supporting Auto-Ex have adequate capacity, security and contingency protections. Moreover, according to the MSE's representations, the implementation of the proposed rule change will have no adverse effect on the capacity or security of the Exchange's other systems.

As noted above, the MSE proposal will allow specialists to choose which issues will be eligible for Auto-Ex. Although the MSE has limited the ability of a specialist to continually activate and deactivate Auto-Ex on a regular basis; the Commission is still concerned that this aspect of the proposal may be unfair because members may not be able to know on any particular day which issues have Auto-Ex available, and specialists may have incentives to turn off the system, in favor of manual execution, in times of heavy market volume.

The Commission believes that it is appropriate to allow the Exchange to implement Auto-Ex for a one year period because of the potential benefits of the proposal noted above. The pilot period will afford both the Exchange and the Commission an opportunity to monitor the operation and effectiveness of the pilot. Specifically, the Commission believes that this one year period is necessary to provide the Exchange additional time to assemble data regarding execution efficiency and to determine whether Auto-Ex is enhancing the speed of execution of public customer limit orders without degrading the quality of these executions and whether there is any abuse in the use of the system. The Commission believes that the efficient execution of non-marketable limit orders through Auto-Ex on a one-year pilot basis should further the aforementioned objectives as well as promote just and equitable principles of trade.

The Commission requests that the MSE monitor the operation of Auto-Ex during the pilot program and report its finding to the Commission. The Commission is interested in the efficient execution of non-marketable limit orders in equities as well as the operational efficiency of the specialist trading post during periods of heavy volume. Specifically, the Commission is concerned whether all non-marketable limit orders on the MSE specialist book would receive the same execution, whether executed manually or by the Auto-Ex system. In addition, the Commission is concerned that the proposed standard for implementing Auto-Ex be objective. As noted above, the MSE proposed the use of Auto-Ex for issues that have demonstrated accurate and reliable quotes in the primary market, but it ultimately left the decision on which stocks should be included in Auto-Ex to the specialist. During the one year pilot program the Commission urges the MSE to develop more objective standards for determining which stocks will be eligible for the Auto-Ex program, and the Commission believes that such criteria should be included in any requests for extension of the pilot or its permanent approval. Moreover, the Commission anticipates that the MSE will utilize the experience gained over the course of the pilot to determine whether Auto-Ex could be implemented floor-wide.

Thus, in order to facilitate its review of the permanent use of Auto-Ex for non-marketable limit orders, the Commission requests that the Exchange submit by February 15, 1994, a report detailing the use of Auto-Ex during the pilot. Specifically, the Commission is interested in the total number of issues and specialists using Auto-Ex including the percentages these issues and spreads represent in comparison to the MSE's market as a whole, the percentage of MSE order flow executed by Auto-Ex during the pilot period. In addition, the Commission requests that the MSE's report provide a break down of each issue subject to Auto-Ex during the pilot period, including each date the issue was placed on Auto-Ex and removed. The Commission is also interested in the length of time between a print in the primary market and the resulting fill on the MSE for both issues on Auto-Ex and those issues not on Auto-Ex. The Commission expects that the Exchange will submit a proposed rule change by February 15, 1994, to either request permanent approval or an extension of the temporary use of Auto-Ex for non-marketable limit orders.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR-MSE-92-03) is approved for a one year period ending on April 15, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-9138 Filed 4-19-93; 8:45 am]

BILLING CODE 8010-01-M

[12] 15 U.S.C. 78f(b) and 78k-1 (1988).

[13] 15 U.S.C. 78k-1(a)(1)(C) (1988).

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-32140; File No. SR-Amex-92-46]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Member Organization Use of Electronic Display Book

April 14, 1993.

On December 21, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to adopt a policy statement in connection with Amex member organization use, on the Amex trading floor, of an electronic display book for equities being licensed from the New York Stock Exchange ("NYSE").

The proposed rule change was published for comment in Securities Exchange Act Release No. 31805 (February 1, 1993), 58 FR 7273 (February 5, 1993). No comments were received on the proposal.

The Amex recently negotiated an agreement with the NYSE to license the NYSE's electronic display book for equities. Use of the display book on the Amex trading floor is expected to begin on April 28, 1993.[3] As part of the licensing agreement, the NYSE required that it be protected from liability for damages sustained by Amex members and member organizations using the display book on the Amex floor.

Accordingly, the Exchange proposes to adopt a policy statement disclaiming NYSE liability for such damages.[4] The policy statement would constitute a rule or regulation of the Exchange and, upon SEC approval, would be distributed to the Amex membership.

The Amex states that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular, in that it is intended to facilitate transactions in securities.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of sections 6(b) and 11A of the Act.[5] The Commission believes the proposal is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with section 11A in that it furthers the use of new data processing and communications techniques that should result in more effective market operations on the Amex floor as well as the economically efficient execution of securities transactions.

The Commission believes that it is reasonable for the NYSE to be released from liability for injuries sustained by Amex members and member organizations using the NYSE's electronic book on the Amex floor. The proposed rule change is similar to existing Amex [6] and NYSE [7] rules which limit exchange liability. Under these provisions, the exchange typically is not liable to members and member organizations for damages resulting from their use of exchange facilities.[8] In addition, under similar circumstances, the Commission has allowed licensee exchanges to release licensors from certain liability for damages resulting from use of their product.[9] Moreover, the Commission believes that the proposed rule change should provide the exchanges with an added incentive to develop (and then license) cost-effective systems that will benefit investors. Once in use, the electronic display book should allow equity transactions on the Amex to be executed faster and more accurately. The Commission therefore agrees with the Amex that NYSE liability for damages arising out of use of the electronic display book by Amex members and member organizations can properly be disclaimed.[10]

Finally, the Commission wishes to emphasize that this disclaimer only affects NYSE liability for losses sustained by Amex members and member organizations using the electronic display book and does not extend to customer-related losses.[11]

As exchange rules cannot regulate non-members,[12] the Amex's liability provision must extend only to its members.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR-Amex-92-46) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-9184 Filed 4-19-93; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] Telephone conversation between J. Bruce Ferguson, Associate General Counsel, Legal & Regulatory Policy Division, Amex, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on April 12, 1993.

[4] The Commission notes that this disclaimer would only limit NYSE liability for damages sustained by Amex members and member organizations using the electronic display book on the Amex trading floor.

[5] 15 U.S.C. 78f(b) & 78k-1 (1988).

[6] Art. IV, Sec. 1(e) of the Amex Constitution.

[7] Art. II, Sec. 6 of the NYSE Constitution.

[8] Several of these constitutional provisions, including the Amex's, authorize the exchange to carve out exceptions to the disclaimer for facilities involving transmission of orders. Thus exchanges can, and occasionally do, assume some liability towards their membership for damages arising out of such systems use. See, e.g., Amex Rule 60 (holding the Amex liable, up to a specified amount, for inputting errors by the PER/AMOS Systems Clerks).

[9] For example, the Commission has approved limited disclaimers of liability for licensors of the indexes underlying index options. See, e.g., Securities Exchange Act Release Nos. 31382 (October 30, 1992), 57 FR 52802 (November 5, 1992) (File No. SR-CBOE-92-02) (options on Russell 2000 Index); and 1990 (June 24, 1983), 48 FR 30815 (July 5, 1983) (File No. SR-CBOE-83-13) (options on Standard & Poor's 500 Stock Price Index). See also Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (File No. SR-Amex-92-18) (approving comparable disclaimer for Standard & Poor's Depository Receipts). See also, *infra*, note 10.

[10] See Securities Exchange Act Release Nos. 30688 (May 11, 1992), 57 FR 21141 (May 18, 1992) (File No. SR-BSE-92-02) (approving proposed rule change disclaiming Boston Stock Exchange ("BSE") liability for losses resulting from use of its BEACON system); and 26431 (January 9, 1989), 54 FR 1462 (January 13, 1989) (File No. SR-CSE-88-04) (approving proposed rule change disclaiming Cincinnati Stock Exchange ("CSE") liability for losses resulting from use of its trading systems).

[11] See, *supra*, note 4.

[12] In approving comparable BSE and CSE proposals, see *supra* note 10, the Commission affirmatively noted that such disclaimers do not extend to claims by non-members.

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30-3(a)(12) (1991).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the Federal Register. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: *Agency Clearance Officer:* Cleo Verbillis, Small Business Administration, 409 3d Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Development Company Reporting Requirements.

Form No.: N/A.

Frequency: On occasion.

Description of Respondents: Small business development companies.

Annual Responses: 1,916.

Annual Burden: 3,774.

Title: Size Status Declaration.

Form No.: SBA Form 480.

Frequency: On occasion.

Description of Respondents: Small businesses requesting size determinations.

Annual Responses: 4,200.

Annual Burden: 700.

Dated: April 14, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93-9115 Filed 4-19-93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended April 9, 1993

The following Applications For Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48739.

Date Filed: April 6, 1993.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 4, 1993.

Description: Application of Kitty Hawk Aircargo, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing scheduled foreign air transportation of property and mail so that it can commence San Antonio-Laredo, Texas-Monterrey, Mexico all-cargo service.

Docket Number: 48742.

Date Filed: April 7, 1993.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 5, 1993.

Description: Application of Eastwind Capital Partners Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing Eastwind to engage in interstate and overseas scheduled air transportation.

Docket Number: 48744.

Date Filed: April 8, 1993.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 6, 1993.

Description: Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, requests for a certificate of public convenience and necessity to engage in foreign air transportation of persons, property, and mail between Raleigh/Durham, North Carolina, and London, England.

Docket Number: 48746.

Date Filed: April 8, 1993.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 6, 1993.

Description: Application of Antonov Design Bureau, pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit authorizing it to engage in charter foreign air transportation of property and mail between a point or points in the Republic of Ukraine and a point or points in the United States.

Docket Number: 41342.

Date Filed: April 5, 1993.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 3, 1993.

Description: Amendment No. 1 to the Application of Polynesian Airlines (Holdings) Limited, pursuant to section 402 of the Act and subpart Q of the Regulations, for a foreign air carrier permit, submits this amendment to update the information contained in its last filing in this docket and to request that its permit include additional authority to operate between Apia, Western Somoa, on the one hand, and Honolulu, Hawaii and Los Angeles, California, on the other hand.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93-9147 Filed 4-19-93; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During the Week Ended April 9, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48738.

Date filed: April 6, 1993.

Parties: Members of the International Air Transport Association.

Subject: TC3 Mail Vote 629 (Japan/Korea-South Asian Subcontinent PEX fares). Amendment to Mail Vote.

Proposed Effective Date: April 15, 1993.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93-9148 Filed 4-19-93; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Chicago-Greece Combination Air Services

Under Route D of the Air Transport Agreement between the United States and Greece, signed July 31, 1991, the United States may designate airlines to operate service from U.S. points other than New York via Belgrade, Berlin, Budapest, Frankfurt, Hamburg, Ireland, Paris, Rome and Warsaw, to points in Greece and beyond to Bombay, Cairo, Karachi, New Delhi and Tel Aviv. Only one U.S. Carrier designated on Route D of the Agreement may exercise traffic rights between Chicago and Greece and frequencies are limited to seven weekly flights.

United Air Lines has notified the Department that it holds the requisite operating authority to serve the Chicago-Athens market and requests that the U.S. Government designate it to serve the market on Route D. United states that its service will operate via Paris on a single-plane routing. Since, by the terms of the agreement, only one carrier can be so designated, before we designate any airline for this service, we are notifying U.S. certificated carriers that we plan to act affirmatively on United's request unless we receive competing designation requests or applications for operating authority by April 22, 1993.

Carriers without the requisite U.S.-Greece operating authority may file competing certificate and/or exemption applications to serve the Chicago-Athens market no later than April 22, 1993; answers shall be due no later than April 27, 1993; and replies no later than April 30, 1993. Carriers already holding requisite underlying U.S.-Greece operating authority should request designation by the certificate application date.

Except for the filing dates, certificate applications should be filed pursuant to subpart Q of part 302, and exemption applications should conform to subpart D of part 302 of the Department's regulations. Applications should be filed with the Department's Docket Section, room 4107, 400 Seventh Street SW., Washington, DC 20590. Designation applications should be filed with the Office of International Aviation, P-40, room 6402, at the same address and should specify the markets to be served, the proposed startup date and evidence of the carrier's underlying economic authority, including route integration authority, if applicable. Further procedures for acting on the applications filed, if necessary, will be established in a future Department order.

Dated: April 14, 1993.

Paul L. Gretch,

Director, Office of International Aviation.

[FR Doc. 93-9172 Filed 4-19-93; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Improvements to the General Aviation Activity and Avionics Survey

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: Notice is hereby given that the FAA intends to redesign the General Aviation Activity and Avionics Survey to collect information for 1993. This redesign is in response to suggestions for improvements in the amount and type of data collected, the frequency of collection, and actions to increase the statistical validity of the data. The FAA intends to hold a public meeting to discuss this action and provide the relevant background information to facilitate public comment.

DATES: Public meeting will be held at 3 p.m. on May 3, 1993, at the General Aviation Manufacturers Association, suite 801, 1400 K Street NW., Washington, DC 20005. Comments regarding improvements to the survey must be received on or before May 20, 1993.

ADDRESS: Comments may be mailed in duplicate to: Federal Aviation Administration (FAA), Office of Policy, Plans, and Management Analysis, Attn: Ms. Patricia Beardsley (APO-110), room # 939, 800 Independence Avenue SW., Washington, DC 20591; or delivered in duplicate to the Office of Policy, Plans, and Management Analysis at the above address. Comments must be marked: General Aviation Activity and Avionics Survey Comments.

FOR FURTHER INFORMATION CONTACT: Patricia Beardsley, FAA, Statistics and Forecast Branch, APO-110, room # 939, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8032.

SUPPLEMENTARY INFORMATION

Comments Invited

The FAA is evaluating the need for changes and improvements to the General Aviation Activity and Avionics Survey for survey data year 1993. A public meeting will be held at 3 p.m. on May 3, 1993, at the General Aviation Manufacturers Association, suite 801, 1400 K Street NW., Washington, DC 20591, to provide information as to: The timetable for the 1993 survey, the FAA evaluation process, changes suggested to date, and preliminary criteria under consideration to evaluate change suggestions. All interested persons are invited to attend this meeting and submit written suggestions for changes and/or improvements to the survey design, the statistical analysis of the data, the frequency of collection, and any other related elements. Communications should specify the General Aviation Activity and Avionics Survey and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement appears: "General Aviation Activity and Avionics Survey Comments." The postcard will be date stamped and returned to the commentor.

John M. Rodgers,

Director, Office of Aviation Policy, Plans, and Management Analysis, (APO-1).

[FR Doc. 93-9175 Filed 4-19-93; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket S-898]

Lykes Bros. Steamship Co., Inc.; Application Under Section 608 of the Merchant Marine Act, 1936, as Amended

Notice is hereby given that an application, dated February 26, 1993, as amended by letters dated March 23, 25, and April 8, 1993, has been filed for authorization under section 608 of the Merchant Marine Act, 1936, as amended (Act) to transfer the Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB-451, Lykes Bros. Steamship Co., Inc. (Lykes) to Louisiana Vessel Management, Inc. (LVM), and that upon approval the ODSA will be transferred to LVM and then all of the stock of LVM will be sold to KEMSS Maritime Ltd. (KEMSS). LVM will be the bareboat charterer of all the U.S.-flag ships now operated by Lykes, subsidized or unsubsidized.

LVM and KEMSS will be corporate entities totally separate from Lykes and will have no shareholders, directors, officers or employees in common with Lykes, Lykes' parent, or any of Lykes' affiliates; they will have 100 percent U.S. citizen shareholders and U.S. citizens holding all directors' and officers positions, so they will be United States citizens within the meaning of section 905 of the Merchant Marine Act, 1936, as amended. The owners of Blue Phoenix Enterprises, Inc., the applicant with respect to Maritime Administration Docket No. P-007 will not be shareholders, directors, or officers of LVM or KEMSS.

Approval of the Maritime Administration for the requested transfer is required under section 608 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1178). The Maritime Administration is allowing public comment solely as a matter of discretion for the purpose of protecting the Government's interest in performance of the ODSA.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation desiring to express views thereon, may file written comments in triplicate with the Secretary, Maritime Administration, room 7300, 400

Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on May 3, 1993. The Maritime Administration will consider any comments submitted.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-differential Subsidies)

Dated: April 15, 1993.

By Order of the Maritime Administrator/ Maritime Subsidy Board.

James E. Saari,

Secretary.

[FR Doc. 93-9197 Filed 4-19-93; 8:45 am]

BILLING CODE 4910-81-M

PRESIDENT'S TASK FORCE ON NATIONAL HEALTH CARE REFORM

Closed Meetings

The President's Task Force on National Health Care Reform will hold closed meetings on the following dates to formulate, and deliberate with respect to, advice for the President on national health care reform: April 20; April 21; April 22; April 23; April 25; April 26; April 27; and April 29.

Pursuant to 41 CFR 101-6.1015(b)(2), notice of less than 15 days is provided because of the extraordinary circumstance of the short time frame within which the President's Task Force has been asked by the President to formulate advice for the President on a national health care reform proposal.

The above-referenced meetings are closed in their entirety to the public pursuant to the opinion and order of the United States District Court for the District of Columbia in *Association of American Physicians and Surgeons, et al.* v. *Clinton, et al.*, No. 93-399 (March 10, 1993 D.D.C) (Lamberth, J.).

The above schedule is subject to change. Any changes to the schedule shall be published in the **Federal Register**.

Dated: April 19, 1993.

Vincent W. Foster,

Deputy Counsel to the President.

[FR Doc. 93-9429 Filed 4-19-93; 1:08 pm]

BILLING CODE 3195-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 74
Tuesday, April 20, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

TIME AND DATE: Wednesday, April 28, 1993 from 8:30 a.m. to 1:00 p.m. and Thursday, April 29, 1993 from 9:00 a.m. to 12:00 p.m.

PLACE: On April 28, 1993 the meeting will be held at the Hotel Washington, 515 15th St., NW., Washington, DC 20004. On April 29, 1993, the meeting will be held at the Commission's offices, 529 14th Street, NW., Suite 452, Washington, DC 20045.

STATUS: The meeting will be open to the public with the exception of 9:00–9:45 a.m. on Thursday, April 29. This session will be closed to the public for the purpose of conducting deliberations on grant applications.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

The Board of Directors of the Commission on National and Community Service will meet on April 28–29 to discuss the Commission's budget, committee reports, the Summer of Service program and the money allocated to the Commission through the Defense Authorization Act of 1993.

Portions Closed to the Public

The Board will be in Executive Session on Thursday, April 29, from 9:00–9:45 a.m. to conduct deliberations on grant applications submitted to the Commission. The Board will be reviewing applications submitted under the National and Community Service Act, Subtitles B–1 (Serve-America), B–2 (Higher Education), C (American Conservation and Youth Service Corps), D (National and Community Service), and E (Innovative and Demonstration Projects). Grant awards will be announced at a later time.

CONTACT PERSON FOR MORE INFORMATION: Terry Russell, General Counsel, Commission on National and Community Service, 529 14th Street, NW., Suite 452, Washington, DC 20045, (202) 724–0600.

Catherine Milton,

Executive Director, Commission on National and Community Service.

[FR Doc. 93–9330 Filed 4–16–93; 3:47 pm]

BILLING CODE 6820–BA–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 14, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–9326 Filed 4–16–93; 2:25 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, May 7, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–9325 Filed 4–16–93; 2:25 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11.00 a.m., Friday, May 21, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–9327 Filed 4–16–93; 2:22 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, May 28, 1993.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–9328 Filed 4–16–93; 2:22 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:00 p.m., Monday, April 26, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Judicial Session.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–9329 Filed 4–16–93; 2:22 pm]

BILLING CODE 6351–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 6:00 p.m., Sunday, April 25, 1993.

PLACE: 1250 South Hayes Street, Arlington, Virginia.

STATUS: This entire meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Closed to the Public: The Board will consider the following:

- Discussion of Federal Home Loan Bank Study

The above matter is exempt under sections 552b(c)(9) (A) and (B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93–9346 Filed 4–16–93; 3:32 pm]

BILLING CODE 6725–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9 a.m., Monday, April 26, 1993.

PLACE: Board Room Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public: The Board will consider the following:

1. Monthly Reports
   A. Financial Report
   B. Membership Report
2. 1992 Year-End AHP Report
3. Approval of Finance Board Response to HCDA Mandated Study of the Bank System
4. Advances Rule

A. Final rule on advances
B. Interim final rule on non-member mortgagees

Portions Closed to the Public: The Board will consider the following:

1. Summary Agenda
   A. FHLBank of Pittsburgh AHP
   B. Dividend rate swap issue disclosed in the San Francisco examination, and approval of EROD/OL&EA analysis and approach to its resolution
   C. Approval of the March Board Minutes
2. 1993 Agency Priorities—First Quarter Report
3. Issuance of Debt without Finance Board Approval
4. First Quarter Examination Update and Progress Report
5. System 2000 Update
6. Board Management Issues

The above matters are exempt under one or more of sections 552b(c) (2), (8), and (9)(A) and (B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408-2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93-9347 Filed 4-16-93; 3:32 pm]

BILLING CODE 6725-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, April 26, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: April 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-9362 Filed 4-16-93; 3:58 pm]

BILLING CODE 6210-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-93-13]

TIME AND DATE: April 26, 1993 at 9:30 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda
2. Minutes
3. Ratification List
4. Petitions and complaints:
   1. Certain Recombinantly Produced Human Growth Hormones (Docket Number 1750).
   2. Sputtered Carbon Coated Computer Disks (Docket Number 1751).
5. Outstanding action jacket requests:
   1. EC-93-005, Report on Inv. No. 332-267 EC-1992: (Fifth Followup Report).
   2. GC-93-028, Sanction for APO Breaches in an investigation under Title VII of the Tariff Act of 1930.
   3. O/TA & TA-93-01, Reports on pending legislation.
   4. O/TA & TA-93-02, Reports on pending legislation.
   5. O/TA & TA-93-03, Reports on pending legislation.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205-2000.

Issued: April 15, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93-9281 Filed 4-16-93; 3:11 pm]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, April 27, 1993.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Ex Parte No. MC-100 (Sub-No. 6), *Single State Insurance Regulation*

Finance Docket No. 32013, *Brotherhood of Locomotive Engineers, et al.* v. *CSX Transportation, Inc., et al.*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of External Affairs, Telephone: (202) 927-5350, TDD: (202) 927-5721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-9285 Filed 4-16-93; 3:14 pm]

BILLING CODE 7035-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, April 27, 1993.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5745A "Most Wanted" Safety Recommendations Program Status Report and Suggested Modifications.

6046 Aviation Accident/Incident Summary Report: Loss of Control, Business Express, Inc., Beechcraft 1900C, Block Island, Rhode Island, December 28, 1991.

6039 Railroad Accident/Incident Summary Report: Rear-End Collision of GCRTA Equipment Train at West 98th Street Station, Cleveland, Ohio, July 2, 1991.

NEWS MEDIA CONTACT: Telephone (202) 382-0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: April 16, 1993.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 93-9318 Filed 4-16-93; 2:20 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 19, 26, May 3 and 10, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 19

Thursday, April 22

2:30 p.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Licensees' Announcements of Safeguards Inspections Rulemaking (Tentative) (Contact: Priscilla Dwyer, 301-504-2478)

b. Final Amendments to 10 CFR Parts 26, 70, and 73 to Establish Fitness-for-Duty Requirements for Licensees Authorized to Possess, Use, or Transport Formula Quantities of Strategic Special Nuclear Material (Tentative) (Contact: Stanley Turel, 301-492-3739)

2:35 p.m.

Briefing on Design Basis Threat Reevaluation (Public Meeting) (Contact: Robert Burnett, 301-504-3365)

4:00 p.m.

Briefing on Design Basis Threat Reevaluation (Closed—Ex. 1)

Friday, April 23

11:00 a.m.

Discussion of Nuclear Safety in the Former Soviet Union and Eastern Europe (Closed—Ex. 1)

2:00 p.m.

Briefing by ABB/CE on Status of System 80+ Application for Design Certification (Public Meeting) (Contact: ABB/CE, 301-881-7040)

3:30 p.m.

Briefing on Assessment of NRC Inspection Program (Public Meeting) (Contact: Richard Vollmer, 301–504–3600)

Week of April 26—Tentative

Friday, April 30

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 3—Tentative

Monday, May 3

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 10—Tentative

Friday, May 14

10:00 a.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–492–8049)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:30 p.m.
Briefing on Evolutionary and Advanced Light-Water Reactor Design Issues (Public Meeting) (Contact: Richard Borchardt, 301–504–1193)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the Status of Meeting Call (Recording)—(301) 504–1292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

William M. Hill, Jr.,
SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–9294 Filed 4–16–93; 3:13 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of April 19, 1993.

A closed meeting will be held on Tuesday, April 20, 1993, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, April 20, 1993, at 2:30 p.m., will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Christine Sakach (202) 272–2300.

Dated: April 16, 1993.

Jonathan G. Katz,
Secretary.

[FR Doc. 93–9363 Filed 4–16–93; 3:59 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 58, No. 74
Tuesday, April 20, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 632; FTZ Docket 19-91]

Application of the Nashville Metropolitan Port Authority for Expanded Subzone Authority Nissan Motor Manufacturing Corporation U.S.A., FTZ Subzone 78A

Correction

In notice document 93-7335 appearing on page 16650 in the issue of Tuesday March 30, 1993, make the following correction:

On page 16650, in the third column, in the first line "18th" should read "19th".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-030-03-3130-10; NMNM 82703]

Issuance of Exchange Conveyance Documents and Order Providing for Opening of Public Land in Catron County; New Mexico

Correction

In notice document 93-6018 beginning on page 14420 in the issue of Wednesday, March 17, 1993, make the following corrections:

1. On page 14420, in the second column, in the land description, under T. 8 S., R. 12 W., in Sec. 21, in the first line, "E½NE⅛" should read "E½NE¼".

2. On the same page, in the same column, under T. 3 N., R. 17 W., in Sec. 17, in the first line, "S½,S½" should read "S½S½".

3. On the same page, in the third column, under T. 2 S., R. 18 W., in Sec. 3, in the first line, "SE½;" should read "SE¼;".

4. On the same page, in the same column, under T. 10 S., R. 4 W., in Sec. 1, in the first line, "SW½NE¼," should read "SW¼NE¼,".

5. On the same page, in the same column, in the same township, range, section and line, insert "N½SW¼" after "S½NW¼,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-4210-04; MTM 74602]

Notice of Conveyance of Certain Lands in Beverhead County, Montana, and Order Providing for Opening of Public Land in Beaverhead County; MT

Correction

In notice document 93-6294 beginning on page 14586 in the issue of Thursday, March 18, 1993, make the following correction:

On page 14586, in the third column, under the heading **Principal Meridian, Montana**, in the first line, "T. 10 S., R. W.," should read "T. 10 S., R. 6 W.,".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-31661; IA-1357]
RIN 3235-AE54

Registration of Successors to Broker-Dealers and Investment Advisers

Correction

In rule document 92-31867 beginning on page 7 in the issue of Monday, January 4, 1993, make the following correction:

On page 10, in the third column, in amendatory instruction 2., "§ 240.25b1-3" should read "§ 240.15b1-3".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-93-12]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

Correction

In notice document 93-5121 beginning on page 12625 in the issue of Friday, March 5, 1993 make the following correction:

On page 12625, in the third column, under the heading "**Petitions for Exemption**", in the second line, "Lifetime" should read "Lifeline".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 93-27]

Country of Origin of Textile Products From U.S. Insular Possessions

Correction

In rule document 93-8705 beginning on page 19347 in the issue of Wednesday, April 14, 1993, make the following correction:

On page 19349, in the second column, the amendatory instruction for § 12.130 should read as follows:

2. Section 12.130 is amended by redesignating paragraph (c) and its heading as paragraph (c)(1), adding a new heading to paragraph (c), and adding paragraph (c)(2) to read as follows.

BILLING CODE 1505-01-D

Tuesday
April 20, 1993

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 121
The Age 60 Rule; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 27264]

The Age 60 Rule

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The FAA is considering whether to initiate rulemaking on the section of the Federal Aviation Regulations commonly referred to as the Age 60 Rule. Before making this decision, the FAA invites comments on various aspects of the report entitled "Age 60 Project, Consolidated Database Experiments, Final Report," dated March 1993, and the issues addressed in this notice.

DATES: The public meeting will be held on June 23, 1993, starting at 9 a.m. Written comments are also invited and must be received on or before July 17, 1993.

ADDRESSES: The public meeting will be held at the Ramada Renaissance, 999 Ninth Street, NW., Washington, DC 20001. Persons unable to attend the meeting may mail their comments in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Rules Docket (AGC-10), Docket No. 27264, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the meeting or questions regarding the logistics of the meeting should be directed to Florence Hamn, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9822; telefax (202) 267–5075.

Questions concerning the subject matter of the meeting should be directed to Dan Meier, Federal Aviation Administration, Regulatory Branch, Flight Standards Service, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3749; telefax (202) 267–5229.

SUPPLEMENTARY INFORMATION:

Participation at the Meeting

Requests from persons who wish to present oral statements at the public meeting should be received by the FAA no later than June 11, 1993. Such requests should be submitted to Florence Hamn, as listed above in the section titled "**FOR FURTHER INFORMATION CONTACT**" and should include a written summary of oral remarks to be presented, and an estimate of time needed for the presentation. Requests received after the date specified above will be scheduled if there is time available during the meeting; however, the name of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers that will be available at the meeting. In order to accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested.

Background

In 1959, the FAA promulgated a rule requiring that no person pilot an aircraft governed by part 121 of the Federal Aviation Regulations (FAR) if that person had reached his or her 60th birthday (14 CFR 121.383(c)). The rule applies to all aircraft having more than 30 seats or a payload capacity of more than 7,500 pounds.

In the late 1970's, Congress directed the National Institutes of Health (NIH) to initiate a comprehensive study on the Age 60 issue (Pub. L. 96–171). The resulting report entitled "Report of the National Institute on Aging Panel on the Experienced Pilot Study" (August 1981) recommended that the rule be maintained. The NIH study included data collected from 1976–1980 and was obtained from FAA medical records and from a National Transportation Safety Board data base. The study compared the accident rates for each age group after adjusting for the amount of total and recent flying done by different age groups. The methodology expressed accident rates as the number of accidents per flight hour. This study indicated that the accident rates for pilots whose medical certificates permitted them to fly as commercial airline pilots had a substantially higher accident rate after age 60 than at younger ages.

In late 1990, the FAA initiated a study aimed at consolidating available accident data and correlating it with the amount of flying by pilots as a function of their age. The report regarding this study entitled "Age 60 Project, Consolidated Database Experiments, Final Report," dated March 1993 was made available to the public on April 9, 1993. The report suggests, on the basis of actual accident data analyzed from 1976–1988, there is "no hint of an increase in the accident rate for pilots of scheduled air carriers as they near their 60th birthday." Because of the Age 60 rule there are no available data for accident rates of pilots beyond age 60. therefore, data for pilots flying in private operations were also examined.

Following the FAA rulemaking in 1959, the International Civil Aviation Organization (ICAO) adopted changes to international safety standards which set an age limit of 60 for the pilot in command of large transport aircraft operating in international air transport service, but did not set a limit on the age of the second-in-command. However, since that time, many countries have adopted rules for their airline pilots which differ from the ICAO standards. For example, Canada has an age limit of 62, Japan has a newly adopted limit of age 63, and the Joint Aviation Authorities of Europe is proposing to harmonize the European rules to age 65 (provided one pilot is no older than 60). When operating in the United States, the FAA requires these airlines to adhere to the ICAO standards.

Specific Issues for Public Comment

There are several specific issues, discussed in the following paragraphs, on which the FAA seeks comment at the public meeting.

These key issues are intended to help focus public comments on areas which will be useful to the FAA in determining whether to initiate rulemaking. The comments at the meeting need not be limited to these issues, and the FAA invites comments on any other aspect of the report or the possible rulemaking.

Economic Issues

(1) Would possible rulemaking to increase the current age 60 limitation increase or reduce costs for the airline industry?

(2) Would a rule change result in the hiring of fewer new pilots or in increased furloughs due to the retention of pilots age 60 or older? If so, to what extent? What would be the effect on training costs?

(3) What portion of pilots reaching the age of 60 would be inclined to continue working as part 121 pilots if permitted?

Safety Issues

(1) Should there be a maximum age limit for pilots operating in part 121 operations? If so, what should be the age limit?

(2) Does the report provide enough information to serve as a basis for a rule change to section 121.383(c) of the FAR. If not, what additional areas should be considered for further study? Are there mortality and morbidity data available for individuals who have ceased serving as part 121 pilots after reaching the age of 60?

(3) If the age limit were increased, should the number of individuals over

the age of 60 serving as part 121 pilots on an aircraft be restricted?

(4) If a rule change occurs, should the part 121 pilot over the age of 60 be limited to the duties of the second-in-command?

(5) Is there evidence that older pilots have greater difficulty transitioning from one aircraft to another type of aircraft? Does that difficulty increase with age? If so, should the FAA restrict part 121 pilots at a certain age from transitioning to other aircraft used in part 121 operations with which they are unfamiliar?

(6) Should the FAA impose additional requirements (e.g., training, currency, medical, performance testing) for any former part 121 pilot or current part 121 pilot who would be affected by a rule change?

(7) Are the current air crew training and qualification rules adequate for pilots who are age 60 or older?

(8) Should tests to measure individual performance be required for part 121 pilots over the age of 60?

Meeting Procedures

The following procedures are established to facilitate the meeting:

(1) There will be no admission fee or other charge to attend or to participate in the meeting. The meeting will be open to all persons who have requested in advance to present statements or who register on the day of the meeting (between 8:30 a.m. and 9:00 a.m.) subject to availability of space in the meeting room. The meeting may adjourn early if scheduled speakers complete their statements in less time than currently is scheduled for the meeting.

(2) An individual, whether speaking in a personal or a representative capacity on behalf of an organization, may be limited to a 10-minute statement. If possible, we will notify the speaker if additional time is available.

(3) The FAA will try to accommodate all speakers. If the available time does not permit this, speakers generally will be scheduled on a first-come-first-served basis. However, the FAA reserves the right to exclude some speakers if necessary to present a balance of viewpoints and issues.

(4) Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

(5) Representatives of the FAA will preside over the meeting. A panel of FAA personnel involved in this issue will be present.

(6) The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be included in the public docket. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

(7) The FAA will review and consider all material presented by participants at the meeting. Position papers or material presenting views or arguments related to the report and issues may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

(8) Statements made by members of the meeting panel are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a member of the panel is not intended to be, and should not be construed as, a position of the FAA.

(9) The meeting is designed to solicit public views and more complete information on the report and the issues discussed in this notice. Therefore, the meeting will be conducted in an informal and nonadversarial manner. No individual will be subject to cross-examination by any other participant; however, panel members may ask questions to clarify a statement and to ensure a complete and accurate record.

Authority: 49 U.S.C. app. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1501; 49 U.S.C. 106(g).

Issued in Washington, DC, on April 14, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

[FR Doc. 93–9110 Filed 4–19–93; 8:45 am]

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federal register

Tuesday
April 20, 1993

Part III

The President

Proclamation 6546—National Volunteer Week, 1993

Federal Register
Vol. 58, No. 74
Tuesday, April 20, 1993

Presidential Documents

Title 3—

The President

Proclamation 6546 of April 17, 1993

National Volunteer Week, 1993

By the President of the United States of America

A Proclamation

The spirit of service is embodied in the people of America. With the knowledge that each of us benefits when we all work together, and with the willingness to act on that knowledge, we have always strived to bring out the best in ourselves and in our country. This tradition of service sustains and defines our citizenship and our democracy. Our shared institutions and values unite this country and make it great. None of these runs deeper than the spirit of service.

As they have throughout history, volunteers today are lifting up America. Millions of citizens are giving of themselves to help provide a better future for all Americans. The many forms of service are as diverse as the American people: a homemaker organizing a neighborhood patrol, a retired firefighter becoming a foster grandparent, a teenager volunteering in a health clinic, or a small child designing a recycling program. A uniquely American spirit unites all of these efforts.

In our smallest counties and in our largest cities—in every community across the land—citizens are renewing America through service. Alone, any one effort can make a significant impact. Together, they can change our country forever—not only through the material improvements they create but also through the spiritual transformation they foster.

This week, then, it is fitting that we honor the millions of people who devote themselves to helping others. But this year, let us do more than recognize their efforts. Let us renew our spirit of volunteerism and rededicate ourselves to serving our fellow Americans.

This is a time to rekindle the spirit of service. Old and young, rich and poor, all of us have roles to play in making our Nation stronger. We must serve in order to allow our children—and future generations—to live up to their full potential. Just as important, we must serve in order to be our best as Americans and as human beings.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, do hereby designate the week beginning April 18, 1993, as National Volunteer Week. I ask all Americans to join in commending the contributions volunteers make to our Nation. I urge every citizen to consider how, in our own ways, we can renew our Nation's hope, revitalize our people's spirit, and reclaim our country's promise.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of April, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

[FR Doc. 93–9393
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